EUROPEAN COMMISSION

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

To the notifying party

Subject: **Case M.8785 – The Walt Disney Company / Twenty-First Century Fox**
Commission decision pursuant to Article 6(1)(b) in conjunction with Article 6(2) 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 14 September 2018, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which The Walt Disney Company ("TWDC", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control of parts of Twenty-First Century Fox, Inc. ("Fox", USA) ("the Transaction").[3] TWDC is hereinafter referred to as the "Notifying Party", and TWDC and Fox are hereinafter referred to as the "Parties".

1. THE PARTIES

(2) **TWDC** is primarily active in the production and theatrical distribution of films, the supply/licensing of audio-visual content, the operation and wholesale supply

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

2 OJ L 1, 3.1.1994, p. 3 (the 'EEA Agreement').

3 Publication in the Official Journal of the European Union No C 338, 21.09.2018, p. 27.

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of TV channels, consumer products, books and magazines, the provision of live entertainment, and the licensing of music. It also owns and operates a theme park in the EEA, Disneyland Paris, provides cruises through the Disney Cruise Line, and offers travel packages. TWDC is organized into four business segments: (i) direct-to-consumer and international; (ii) parks, experiences and consumer products; (iii) media networks; and (iv) studio entertainment.

(3) **Fox** is primarily active in the theatrical distribution of films, the supply/licensing of audio-visual content, and the operation and wholesale supply of TV channels. Fox is a diversified global media company with operations in three main industry segments: cable network programming, television ("TV") and filmed entertainment.

2. THE CONCENTRATION

(4) On 13 December 2017, TWDC and Fox entered into an agreement whereby TWDC would acquire certain assets of Fox[4], including the Twentieth Century Fox Film and Television studios, along with cable and international TV businesses and Fox's stake in Sky plc ("Sky"). On 20 June 2018, TWDC and Fox entered into an amended and restated agreement and plan of merger, increasing the purchase value from approximately USD 52.4 billion to USD 71.3 billion.

(5) The Transaction also takes place against the backdrop of Fox's and Comcast Corporation's ("Comcast") attempts to acquire control over Sky. Comcast won the bidding war with Fox with an offer of 17.28 pounds per share for a total of USD 39 billion (against Fox's offer of 15.67 pounds per share).[5] Comcast's offer is conditional upon shareholders accounting for 50% +1 of the voting rights in Sky tendering their shares. Moreover, the City Code on Takeovers and Mergers prohibits Fox (and TWDC, as a party deemed to be "acting in concert" with Fox) from posting a new bid for Sky within 12 months of its current bid lapsing.[6] Finally, Fox completed the sale of its shares in Sky to Comcast on 9 October 2018.[7] Therefore the Commission assesses the Proposed Transaction only consisting of the acquisition of sole control by Disney over Fox excluding Sky from the perimeter of the transaction.

3. EU DIMENSION

(6) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[8] (TWDC: EUR 49 943 million;

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4 The assets that do not form part of the Transaction are a portfolio of Fox's news, sports, and broadcast businesses, including the Fox News Channel, Fox Business Network, Fox Broadcasting Company, Fox Sports, Fox Television Stations Group, and sports cable networks FS1, FS2, Fox Deportes, and Big Ten Network, and certain other assets. These will be grouped in a newly listed company that will be spun off to its shareholders.

5 See: http://www.thetakeoverpanel.org.uk/publication/view/2018-16-sky-plc.

6 At the time of the notification, Fox owned a 39% stake in Sky and had made an offer to acquire the remaining 61%. However, that stake did not confer Fox control over Sky. See Note on Sky Auction of 27 September 2018. Fox's bid lapsed on 6 October 2018 (Reply to question 1 of RFI 19).

7 Reply to question 1 of RFI 19.

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

Fox: EUR 26 149 million). Each of them has an EU-wide turnover in excess of EUR 250 million (TWDC: EUR […] million; Fox: EUR […] million), 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.

4. RELEVANT MARKETS

4.1. Introduction

(7) The Parties' activities mainly overlap in the audio-visual sector. Additional overlaps and vertical relationships arise in other areas, including the supply of advertising space, merchandising, live entertainment, music, theme parks, and travel. However, in the EEA horizontally and vertically affected markets only arise in the following areas:

a. Production and distribution of films for theatrical exhibition;

b. Distribution of home entertainment content;

c. Licensing of audio-visual content for TV services;

d. Wholesale supply of TV channels;

e. Provision of retail audio-visual services.

4.2. The theatrical release value chain

(8) The theatrical value chain is comprised of different stages, starting with the production of films, then their distribution to exhibitors and finally their exhibition to the audience.

(9) Production activities sit at the top of the audio-visual supply chain. Film studios produce films in a number of ways, including various forms of cooperation with and acquisitions from other production companies. Film production involves a number of operations such as collecting financing, developing scripts, casting actors and directors, shooting etc.[9]

(10) Distribution of films is directly downstream from production and takes place after a film is completed. Producers either carry out the distribution of their films to exhibitors internally, through their own distributing arm, or they license the rights to distribute their films to exhibitors to third-party distributors. Such third-party distributors can be either independent distributors or, in some cases, the distribution arm of another producer. The market for distribution of films for theatrical exhibition is further discussed below in Section 4.4.

(11) Exhibition of films lies directly downstream from distribution and is the final stage of the theatrical release of a film. Theatrical exhibitors, commonly referred to as "movie cinemas", are the point where films are "consumed" (viewed) by the final consumers, i.e. the audience. Neither the Parties nor any of their competitors

9 See Form CO, Chapter 1A, paragraph 3.

in the market for the production of films for theatrical exhibition are active in this segment of the value chain.

(12) Starting from the end, exhibitors set the ticket prices final consumers pay for admission to the cinemas. Although the contractual relationships between, on the one hand, distributors and exhibitors and, on the other hand, producers and distributors can vary significantly, the general rule is the following.

(13) Distributors negotiate with exhibitors (i) the terms of exhibition, the main ones being the number of screens a film will be exhibited on and the length of the exhibition window; and (ii) the price of distribution which takes the form of a revenue sharing agreement between distributors and exhibitors, called the "rental fee". Typically an exhibitor retains approximately 50% of net box office revenues on the week of release of a film and the exhibitor's share increases for each consecutive week a film is shown. This is the case both when distribution takes place through third-party distributors as well as when it takes place through the distribution arm of a vertically integrated producer.

(14) When it comes to the relationship between distributors and producers there are two main variants. In the case of major film producing studios, distributors retain a distribution fee and remit the rest of their box office revenue share to the producer. The exact nature of the distribution fee (fixed or variable or a combination of both, scalable or not) is subject to the negotiations between the contracting parties. Marketing and promotion activities will usually, but not always, be arranged, and the corresponding costs covered, by the producer. Distributors bare little to no financial risk in these cases. Alternatively, distributors may acquire the exhibition rights of a film for a certain price (again fixed or variable or a combination of both, scalable or not, subject to negotiations), which is usually the case vis-à-vis smaller independent studios, and subsequently retain the entirety of the distribution revenue share. In this case, normally the distributor arranges and pays for any marketing and promotion activities. This variant entails financial risks for distributors with the upside of significant financial rewards in case the film proves to be a major box office success.

(15) The Parties are active in the production of films for theatrical exhibition (release) and the direct distribution of these films to exhibitors in some Member States, while in others they engage in licensing of distribution rights to third-party distributors.

4.3. Production and licensing of distribution rights of films for theatrical exhibition

4.3.1. Product market definition

(16) The Notifying Party submits that a single product market exists encompassing the production and acquisition of films for theatrical release. The Notifying Party further submits that a distinct market exists for the distribution of films to exhibitors separate from the market for the production of films. The Notifying Party considers that no further segmentation of this product market is warranted.

(17) In previous decisions, the Commission has considered the question of whether production/acquisition and distribution of films for theatrical release constitute a

single or two or more separate product markets and while in some cases ultimately left the question open[10] in others found that the production and distribution of films for theatrical release constitute two separate markets.[11]

(18) The Commission has further considered, but ultimately left the question open, whether a distinction needs to be drawn between films produced by US studios and films produced by non-US studios.[12]

(19) The Commission has not previously assessed the scope of the producers' activities with respect to the licensing of distribution rights to third-party distributors. The Commission notes however that simply producing a film cannot constitute a market before a market-based exchange, such as the distribution of a film, takes place. The market investigation has not provided clear support either in favour or against the view that licensing of distribution rights to distributors and direct distribution to exhibitors constitute two separate product markets.

(20) The results of the market investigation support the view that production and distribution of films for theatrical release constitute two separate product markets.[13]

(21) On the issue of whether a distinction should be drawn between films produced by US studios and films produced by non-US studios the results of the market investigation are inconclusive with most distributors and exhibitors considering that the question is irrelevant since every film represents a unique offering that is not substitutable by other films and with the opinion of producers being split in half.[14]

(22) In light of the above, the Commission considers that, for the purpose of this Decision, the production and licensing of distribution rights to third-party distributors of films for theatrical release constitutes a relevant product market. The Commission also takes the conservative view that licensing of distribution rights to third-party distributors constitutes a product market separate from the distribution of films to exhibitors, given that it entails different commercial activities consisting of marketing, promoting films etc. carried out by different players, with the exhibitors being the distributors' customers. The question whether the market for the production and licensing of films for theatrical release should be further segmented based on whether the films were produced by US or non-US studios can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

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10 Commission decision of 20 December 2012 in Case M.6791 - *The Walt Disney Company/Lucasfilm*; Commission decision of 13 July 2010 in Case M.5579 - *Comcast/NBC Universal.*

11 Commission decision of 14 June 2013 in Case M.6866 - *Time Warner/CME* ; Commission decision of 21 September 1998 in Case M.1219 - *Seagram/Polygram.*

12 Commission Decision of 30 March 2005 in Case M.3595 - *Sony/MGM*.

13 Replies to Questionnaire Q1 to Film Producers of 17 September 2018, question 4; replies to questionnaire Q2 to Distributors of 17 September 2018; replies to questionnaire Q6 to Distributors of 17 September 2018; replies to Questionnaire Q3 to Exhibitors of 17 September 2018.

14 Replies to Questionnaire Q1 to Film Producers of 17 September 2018, question 7; replies to Questionnaire Q2 to Distributors of 17 September 2018, questions 6; replies to Questionnaire Q6 to Distributors of 17 September 2018; replies to Questionnaire Q3 to Exhibitors of 17 September 2018.

4.3.2. Geographic market definition

(23) The Notifying Party submits that the geographic scope of the market for the production and supply of films is at least EEA-wide and most likely global in scope.

(24) In past decisions, the Commission found the geographic market for the production of films for theatrical release to likely be at least EEA-wide but ultimately left the question open.[15]

(25) The market investigation in the present case has however shown that the licensing of distribution rights of films for theatrical release, in other words the relationship between producers and distributors that the Notifying Party refers to as supply, is more often than not national.[16]

(26) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the production and licensing of distribution rights of films for theatrical release is national in scope.

4.4. Distribution to exhibitors of films for theatrical exhibition

(27) As explained in Section 4.2 above, theatrical distribution follows the production of a film and can be done internally, by players that are integrated through the value chain from production to distribution to exhibitors, or through external distributors to whom producers license the distribution rights of their films.

(28) The Parties are vertically integrated and carry out the distribution of their own films in some Member States: both Parties self-distribute in Austria, Belgium & Luxembourg, France, Germany, Italy, Spain, Sweden and the UK & Ireland. In addition, TWDC also distributes its own films in Denmark, Finland, Liechtenstein, Netherlands, Poland and Norway. Elsewhere, the Parties rely on third party distributors. They also carry out the distribution of other studios' films in certain Member States, as will be explained in more detail below in Section 5.3.2.

4.4.1. Product market definition

(29) At the level of the distribution of films to exhibitors, as is for the production of films (see Section 4.3), the Notifying Party argues that no further sub-segmentation is applicable: neither (i) by country of production, given that different stages of production may take place in several countries for a variety of factors, nor (ii) between films produced by US producers or non-US producers since the origin of films is unrelated to their success and the distribution strategy is the same. In essence, all films compete equally for screen space.

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15 Commission Decision of 20 December 2012 in Case M.6791 - *The Walt Disney Company / Lucasfilm*, at para. 59; Commission Decision of 13 July 2010 in Case M.5779 - *Comcast / NBC Universal*, at para. 53.

16 Replies to Questionnaire 1 to Producers of 17 September 2018, question 17; replies to Questionnaire Q2 to Distributors of 17 September 2018, question 19; replies to Questionnaire Q6 to Distributors of 17 September 2018.

(30) As mentioned above, in previous decisions the Commission considered a distinct market for the theatrical distribution of films, different from the production of films. It also assessed whether a segmentation between US films and non-US films was applicable but left the exact product market definition open.[17]

(31) In line with the views submitted with regard to the market for the production of films as set forth above (see paragraph (21)), distributors' views on whether films from US producers and non-US producers are substitutable at distribution level were divided. Distributors explained that US producers generally release larger budget films which are more likely to become blockbusters, however, they also stated that in the EEA local productions are numerous and often successful at national level. In addition, most distributors distribute both, films from US producers as well as local productions, and all films compete for space with exhibitors, which screen a variety of films and select them in a way as to ensure diversity.[18]

(32) In light of the above, the Commission considers that, for the purpose of this Decision, the production of films for theatrical release and the distribution of films for theatrical release constitute two separate product markets. The question whether the market for the distribution of films for theatrical release should be further segmented based on whether the films were produced by US or non-US studios can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.4.2. Geographic market definition

(33) The Notifying Party submits that the geographic scope for the market of distribution of films for theatrical release is at least national.

(34) The Commission has previously considered the relevant geographic market for theatrical distribution to be national or at most regional in scope, based on considerations such as language differences or the fact that distribution is often carried out on a national basis.[19]

(35) The market investigation has confirmed that the distribution of films for exhibition is carried out at national level, regardless of considering the distribution of all films or US and non-US films. Most of the distributors confirmed that they are generally active only in one Member State with different distributors present in each Member State. This is also consistent with the fact that producers mostly licence the distribution rights for their films on a national basis or at most per linguistic region, and the same films are not released in all Member States.[20]

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17 Commission decision of 30 March 2005 in Case M.3595 - *Sony/MGM, para.11*.

18 Replies to Questionnaire Q2 to Distributors of 17 September 2018, questions 4 to 6; replies to Questionnaire Q6 to Distributors of 17 September 2018.

19 Commission decision of 20 December 2012 in Case M.6791 - *The Walt Disney Company/Lucasfilm*, paras 57 and 59; Commission decision of 13 October 2000 in Case M.2050 - *Vivendi/Canal+/Seagram*, para. 16; Commission decision of 21 September 1998 in Case M.1219 - *Seagram/Polygram*, para 53.

20 Replies to Questionnaire Q2 to Distributors of 17 September 2018, questions 14 to 20; replies to Questionnaire Q6 to Distributors of 17 September 2018.

(36) In light of the above, the Commission considers that, for the purpose of this Decision, the relevant geographic market for the distribution of films for theatrical release is likely to be national in scope, regardless of the exact product market. In any event, the Commission considers that for the purpose of this Decision the exact geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.5. Distribution of home entertainment content

(37) After they leave cinemas, films and other audio-visual content (such as TV series) are distributed for "home entertainment", in the form of physical and/or digital products (e.g. electronic sell-through "EST") or are also distributed in the subscription video on demand ("SVOD"), transactional video on demand ("TVOD") and pay-per-view ("PPV") window in the TV markets.

(38) "Home entertainment" refers to the provision of copies of films for consumers to buy or rent and watch at their convenience. Home entertainment products used to be available exclusively in physical formats (such as DVDs and Blu-ray discs, which succeeded video tapes), but are now increasingly distributed in electronic form. With digital purchases, consumers can download a digital copy of the film "to own", or acquire unlimited rights to stream the content from a digital platform or virtual storage locker. This window continues indefinitely, and remains open as long as there is consumer interest in purchasing the film.

(39) TWDC and Fox supply or license their home entertainment content (films and television programmes) to third party wholesale distributors in physical format (DVD and Blu-ray Discs) and to third party retailers in digital formats (transactional VOD (TVOD), electronic sell-through (EST)) across the EEA.

(40) TWDC distributes its physical home entertainment films directly to retailers in the following countries: Austria; Belgium; Denmark; Finland; France; Germany; Italy; Luxembourg, the Netherlands; Norway; Spain; Sweden; the UK and Ireland. TWDC distributes its content through third party distributors in the other EEA countries, namely: Estonia, Latvia, Lithuania, Bulgaria, Croatia, Slovenia, Czech Republic, Slovakia, Greece, Cyprus, Iceland, Poland, Portugal, Romania and Hungary. With regards to other TV content, TWDC distributes it in all EEA countries except Bulgaria, Liechtenstein and Malta.

(41) Fox distributes its physical home entertainment films directly to retailers in the following countries: Austria; Belgium; Denmark; Finland; France; Germany; Italy; Luxembourg, the Netherlands; Norway; Spain; Sweden; the UK and Ireland. Fox distributes its content through third party distributors in the other EEA countries, namely: Estonia, Latvia, Lithuania, Bulgaria, Croatia, Slovenia, Czech Republic, Slovakia, Greece, Cyprus, Iceland, Poland, Portugal, Romania and Hungary. With regards to other TV content, Fox distributes it in all EEA countries except Malta.

(42) TWDC and Fox license their digital home entertainment films directly to retailers across all EEA countries. With regards to other TV content, such as TV-series, Fox licenses its digital home entertainment content across all EEA countries while TWDC is only active in Austria, France, Germany and the UK.

4.5.1. Product market definition

(43) The Notifying Party submits that, due to the increasing convergence between the home entertainment and television markets, it is not relevant to distinguish the distribution of audio-visual content for home entertainment from the distribution of the same content in the TV markets. Moreover, the Notifying Party submits that, it is not relevant to delineate the market for distribution of home entertainment content by genre, release window, or country of production.

(44) In previous decisions, the Commission has distinguished between the licensing and supply of home entertainment content for physical exploitation and for digital exploitation.[21] The Commission has also considered, but ultimately left open, whether the market should be segmented by type of content (such as films, TV series, and other content, e.g. documentaries and concerts), sell-through and rental, and motion picture new releases and catalogue. [22]

(45) In *Time Warner/CME*, the Commission also distinguished between different levels in the value chain, which are different for physical and digital home entertainment products. However, the Commission left open whether the retail distribution of home entertainment content should be further segmented between physical and digital products. [23]

(46) With regards to a possible segmentation of home entertainment content on the basis of the different type of distribution channel (physical or digital), most of the respondents to the market investigation indicated that physical or digital home entertainment are substitutable from a customer perspective. However some respondents indicated that the two should be considered as complements since physical and digital home entertainment target different consumer groups. Moreover, providers of physical content would not be able to impose a constraint on providers of digital content. Physical content requires the cost of a DVD, packaging, and delivery (if ordered online). None of these costs exist for digital delivery. As such, even if they were perfectly substitutable from the consumers' perspective, physical content would not be able to constrain digital content.[24] The existence of significant differences in terms of costs between physical and digital home entertainment products has also been confirmed by respondents to the market investigation. [25] Finally, the significant differences between the two distribution channels have been confirmed by most of the respondents to the market investigation. Most of the physical home entertainment distributors are not active in the distribution of digital home entertainment content and would not be

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21 Commission decision of 14 June 2013 in Case M.6866 - *Time Warner/ CME*; Commission decision of 20 December 2012 in Case M.6791 - *The Walt Disney Company/Lucasfilm*; Commission decision of 13 July 2010 in Case M.5779 - *Comcast/NBC Universal*; Commission decision of 30 March 2005 in Case M.3595 - *Sony/MGM*.

22 Commission decision of 14 June 2013 in Case M.6866 - *Time Warner/ CME*; Commission decision of 20 December 2012 in Case M.6791 - *The Walt Disney Company/Lucasfilm*.

23 Commission decision of 14 June 2013 in Case M.6866 - *Time Warner/ CME*.

24 Replies to Questionnaire Q1 to Producers of 17 September 2018, question 19; replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, question 5; replies to Questionnaire Q5 to Digital Home Entertainment Customers of 17 September 2018, question 5.

25 Replies to Questionnaire Q1 to Producers of 17 September 2018, question 21; replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, question 8; replies to Questionnaire Q5 to Digital Home Entertainment Customers of 17 September 2018, question 8.

able to start distributing digital content without incurring significant costs and investments. [26] Similarly, most digital home entertainment content distributors indicated that they will face significant barriers in order to start distributing physical home entertainment content. [27]

(47) With regards to a possible segmentation by type of content (such as films, TV series, and other content, e.g. documentaries and concerts), most respondents indicated that such a segmentation is not relevant for home entertainment content. However, some respondents, such as Sainsbury's, RTL and Telefonica, consider that a segmentation is still relevant when considering films, TV series and other TV contents since the target audience and pricing are different, and the distribution companies have a distinct focus on each of these sub-segments. [28]

(48) The market investigation provided mixed results on whether the market should be further segmented by type of releases into new releases and catalogue. On the one hand, some respondents, such as Orange and RTL, noted that new releases and catalogue content are commercialized distinctly and there are differences in terms of prices. On the other hand, other respondents, such as Talk Talk and Chili, consider that this distinction is artificial and that customers value both new releases and catalogue contents. [29]

(49) In any event, the Commission considers that for the purpose of this Decision the exact product market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

(50) In light of the above, the Commission considers that, for the purpose of this Decision, the distribution of content for physical home entertainment and the distribution of content for digital home entertainment constitute two separate product markets. The question whether these markets should be further segmented based on the type of content or type of releases can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.5.2. Geographic market definition

(51) The Commission has previously concluded that the relevant geographic market for both home entertainment and television rights is national in scope, or possibly regional along linguistically homogenous regions. [30]

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[26] Replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, question 6.

[27] Replies to Questionnaire Q5 to Digital Home Entertainment Customers of 17 September 2018, question 6.

[28] Replies to Questionnaire Q1 to Producers of 17 September 2018, question 23; replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, question 10; replies to Questionnaire Q5 to Digital Home Entertainment Customers of 17 September 2018, question 10.

[29] Replies to Questionnaire Q1 to Producers of 17 September 2018, question 24; replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, question 11; replies to Questionnaire Q5 to Digital Home Entertainment Customers of 17 September 2018, question 11.

[30] Commission decision of 14 June 2013 in Case M.6866 - *Time Warner/ CME*; Commission decision of 20 December 2012 in Case M.6791 - *The Walt Disney Company/Lucasfilm*; Commission decision of 13 July 2010 in Case M.5779 - *Comcast/NBC Universal*.

(52) The Notifying Party submits that in previous decisions, the Commission concluded that the market for distribution of home entertainment content is national in scope.

(53) Most of the respondents to the market investigation confirm that the market for the distribution of home entertainment content either through physical[31] or digital[32] distribution channel is national in scope. In particular, some respondents highlighted how content and release strategies may differ across countries.

(54) In light of the above, the Commission considers that the retail market for the distribution of home entertainment content, under any possible product market definition, is national in scope.

(55) In any event, the Commission considers that for the purpose of this Decision the exact geographic market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.6. Production and licensing of TV audio-visual content

(56) Audio-visual ("AV") content for television (TV content) comprises all products (films, sports, series, shows, live events, documentaries, etc.) that are broadcast via TV.[33] In previous decisions, the Commission has identified different activities in the TV value chain, namely: (i) the production and supply of TV content (including the supply of pre-produced TV content and Commissioned TV content); (ii) the wholesale supply of TV channels; and (iii) the retail provision of TV services to end customers.[34]

(57) TV production companies produce new TV audio-visual content for either: (i) internal use on their own TV channels or retail TV services if they are vertically integrated in the wholesale supply of TV channels and/or in the retail provision of TV services (that is to say, captive TV production); or (ii) supply to third-party customers (that is to say, non-captive TV production). Both Parties produce and license TV audio-visual content to third parties.

(58) Third-party customers are typically: (i) TV broadcasters, which then incorporate the TV content into linear TV channels, or (ii) content platform operators, which then retail the TV content to end users on a non-linear basis (that is to say, Pay-Per-View ("PPV") or video on demand ("VOD")), including non-traditional platforms, that is to say internet or so-called Over-The-Top ("OTT") platforms.

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31 Replies to Questionnaire Q1 to Producers of 17 September 2018, question 25; replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, question 13.

32 Replies to Questionnaire Q1 to Producers of 17 September 2018, question 25; replies to Questionnaire Q5 to Digital Home Entertainment Customers of 17 September 2018, question 13.

33 Commission decision of 25 June 2008 in Case M.5121 *News Corp/Premiere*, recital 28.

34 See, for example, Commission decision of 21 December 2010 in Case M.5932 *News Corp/BskyB*; Commission decision of 22 September 2006 in Case M.4353 *Permira/All3Media Group*, and Commission decision of 15 April 2013 in Case M.6880 *Liberty Global/Virgin Media*, 15 April 2013.

(59) TV broadcasters and TV distributors who source TV content for their TV channels or retail TV services generally have a choice between a number of sourcing models, which can be broadly categorised as follows:

(a) Obtaining TV content produced on an 'ad hoc' basis (that is to say tailor-made), by:

– Commissioning TV content from a TV production company (which owns the relevant TV format);

– Hiring a TV production company to provide the technical means and deliver the finished TV content based on a format owned by the broadcaster; or

– Producing the content themselves by relying on their in-house facilities (captive TV production); or

(b) Acquiring broadcasting rights from TV production companies for pre-produced TV content (pre-produced TV content, sometimes referred to as off-the-shelf or tape sales).

(60) In most cases, TV production companies produce TV content tailored to the needs of their customers on the basis of original TV formats[35] that they develop themselves or that they acquire from right holders (commissioned production). However, in some instances, TV production companies are hired by TV broadcasters or content platform operators to simply provide the technical production means and deliver the finished programme based on a TV format owned or acquired by the hiring company (production-for-hire or supply of TV production services).

(61) The production costs are usually borne entirely or almost entirely by the TV broadcasters or content platform operators. As regards ownership of the various rights relating to the TV content (for example, primary TV broadcast rights, 'catch-up', VOD, etc.), the extent to which those rights are retained by the production company – as opposed to the acquirer of TV content – may vary based on a number of factors, such as national regulation in the country concerned, the type of broadcasting, the outcome of the commercial negotiations between the parties, etc. Producers or the acquirers of TV content may then achieve secondary revenues by further licensing/distributing the TV content or the TV format to third parties.

(62) It follows that the supply-side of this market comprises TV production companies, while the demand-side comprises third parties that commission the production of TV content or hire TV production services, typically TV broadcasters or content platform operators.

(63) As regards the market for production and supply of TV content, TWDC is mainly active in the production and supply of pre-produced TV content. […]. Fox is active in both the supply of pre-produced TV content and the supply of

35 TV format refers to the overall concept and branding of a copyrighted TV programme.

commissioned TV content through its JV with Apollo, Endemol Shine Group ("Endemol Shine").[36]

4.6.1. Product market definition

(64) The Notifying Party submits that the supply of commissioned TV content and the licensing of pre-produced TV content should be considered as part of the same product market. In this respect, TWDC claims that acquirers of content tend to have one overall budget for the acquisition of content. As a consequence, according to the Notifying Party, investment decisions regarding content acquisition are based on considerations like budget, needs, return on investment or timing, whereas a distinction along categories such as in-house production, commissioning of content or acquisition of pre-produced content is less relevant.

(65) With regard to the licensing of pre-produced TV content, the Notifying Party further submits that a sub-segmentation by genre (films; sports; other content), by release window or by country of production is not warranted. In this respect, TWDC, *inter alia*, notes that, from a demand side perspective, both its direct customers as well as end consumers will substitute content belonging to a specific genre for a different content category in reaction to a relative increase in price. Similarly, according to the Notifying Party, since licensees acquire content across different release windows, a significant portion would switch from the acquisition of specific content for one window to another window in response to a relative price increase. With regard to the country of production, TWDC claims that the distinction between films produced by US studios and other films is not meaningful, *inter alia*, because, in its view, the geographic origin of production does not determine the quality or commercial success of the film.

(66) Eventually, however, the Notifying Party considers that the precise definition of the relevant product market can be left open, as the Transaction does not raise competition concerns under any plausible market definition.

(67) With regard to the market for the supply of TV audio-visual content, in previous decisions, the Commission has concluded that there are separate markets for: (i) the production and supply of commissioned TV content; and (ii) the licensing of broadcasting rights for pre-produced TV content (available 'off-the-shelf').[37]

(68) With regard to the market for licensing of pre-produced TV content, the Commission has considered that it may be subdivided by content type, in particular: (i) films; (ii) sports; and (iii) other TV content; and potential sub-segments within these content types, but ultimately left the market definition open.[38] The question whether TV content could be further sub-divided by distinguishing between US and non-US films, premium and non-premium content or scripted and non-scripted content was also left open in previous decisions.[39] The Commission has also considered further sub-dividing the market for the

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36 Commission decision of 10 July 2014 in Case M.7279 – *Apollo / Endemol.*

37 Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*. Commission decision of 24 February 2015 in Case M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*.

38 Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky;* Commission decision of 21 December 2011 in case M.6369 - *HBO/Ziggo/HBO Nederland;* Commission decision of 24 February 2015 in Case M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*.

39 Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*.

licensing of pre-produced TV content by exhibition window: (i) subscription video on demand ("SVOD"); (ii) transactional video on demand ("TVOD"); (iii) pay-per-view ("PPV"); (iv) first pay-TV window; (v) second pay-TV window; and (vi) free-to-air ("FTA").[40] In the market investigation, the Commission has also tested the role of OTT services as infrastructure used for the delivery of TV content to the consumer.

(69) The results of the market investigation indicate that a majority of producers, broadcasters and retail distributors of TV audio-visual services consider the segmentations by content type and by exhibition window still relevant.[41] As regards a sub-division by scripted and non-scripted content, the market investigation did not provide definite views.[42]

(70) In any event, for the purpose of this Decision, the exact product market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

(71) In light of the above, the Commission considers that, for the purpose of this Decision, the licensing of television rights for films and the licensing of television rights for other TV content constitute two separate product markets. The question whether the market for the licensing of television rights for films should be further segmented by exhibition window or whether a distinction has to be made between US and non-US films can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition. The question whether the market for the licensing of television rights for other TV content should be further segmented can be left open, since the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.6.2. Geographic market definition

(72) The Notifying Party makes reference to previous Commission decisions considering the relevant geographic market as either national or regional, based on linguistically homogenous areas.

(73) The Commission has previously considered the geographic markets for both the production of TV content and broadcasting rights for TV content to be either national or regional, based on linguistically homogeneous areas.[43]

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40 Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*.

41 See replies to Questionnaire Q1 to Producers of 17 September 2018, questions 26-29; replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, questions 5-9; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 5-9; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, questions 7-11; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 7-11.

42 Replies to Questionnaire Q1 to Producers of 17 September 2018, questions 30-33; replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, questions 10-12; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 10-12; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, questions 12-14; replies Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 12-14.

43 Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*; Commission decision of 24 February 2015 in Case M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*.

(74) Most TV broadcasters and TV retail distributors that provided a response to the market investigation indicated that they purchase content nationally or for certain linguistic regions. Some TV broadcasters indicated to also purchase content on an EEA or worldwide basis.[44]

(75) In any event, for the purpose of this Decision, the exact geographic market definition can be left open, as the Transaction does not raise serious doubts as to its compatibility with the internal market regardless of whether the scope of the market is considered to be national or by linguistic region.

4.7. Wholesale supply of TV channels

(76) TV broadcasters package the TV content that they have acquired or produced in-house into linear TV channels. Linear TV channels are broadcast to end users either on a FTA basis or on a pay-TV basis. This wholesale level is an intermediate activity between upstream production and licensing of content, and the downstream retail provision of TV services to customers.

4.7.1. Product market definition

(77) The Notifying Party considers that there is a single market for the wholesale supply of TV channels, within which a range of wholesale suppliers compete, and that no segmentation should be made (i) between pay-TV and FTA channels; (ii) between basic and premium channels; (iii) by genre or theme; or, (iv) by infrastructure / technology.

(78) *Pay-TV and FTA channels.* In particular, TWDC considers that pay-TV and FTA channels are substitutable from the demand-side perspective. According to TWDC pay-TV and FTA channels compete for and show similar content, including for example sports. TWDC notes that some channels, such as Disney Channel, are available on both an FTA and pay-TV basis, depending on the country of broadcast, and show the same or very similar content on both versions of the service. The Notifying Party further submits that pay-TV and FTA channels compete for the same audiences as all pay-TV subscribers can access FTA channels and competition from FTA services therefore constrains pay-TV retailers' willingness to pay to carry TV channels on their subscription service. TWDC also considers that no clear technical differences exist between viewing content on FTA channels and pay-TV channels as set-top boxes for viewing digital FTA channels and connected TVs with additional functionality have similar technical capabilities to pay-TV set-top boxes.

(79) *Basic and premium channels.* The Notifying Party submits that a subdivision between "basic" and "premium" channels is not appropriate as: (i) there is no consistent definition of "basic" and "premium" channels; (ii) it is not possible to generate reliable market shares for each segment; (iii) the same programs are often distributed to both types of channels that market themselves as "basic" and "premium"; and, (iv) retail TV services seek to acquire channels with content that

[44] Replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 13; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 13; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 15; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 15.

will appeal to audiences, regardless of whether that content is deemed "premium" or "basic".

(80) *Segmentation by genre or theme.* The Notifying Party submits that there is substitutability across various genres. TWDC further observes that: (i) content producers, TV retailers, and consumers vary in their classifications as to what constitutes a particular "genre"; (ii) genre classifications are static and potentially misleading given that programming content available on a channel may vary over time; (iii) the retailers' decision to acquire a particular channel does not turn on whether a channel could be identified as belonging to a particular "genre"; and, (iv) applying genre segmentations within narrow wholesale markets would overlook constraints from similar content on FTA or pay-TV services.

(81) *Segmentation by infrastructure / technology.* The Notifying Party refers to previous decisions of the Commission and the German FCO which found that no distinction by infrastructure or technology was appropriate. In addition, TWDC observes that wholesale suppliers of channels supplied on a non-exclusive basis do not generally supply different channels to a retailer depending on the distribution technology they employ but will generally seek to supply the channels on all platforms/services that are secure and capable of carrying the channels. According to the Notifying Party these technology distinctions are even less relevant with the rise of OTT services, accessible throughout the EEA.

(82) In previous decisions, the Commission has identified a wholesale market for the supply of TV channels. Within that market, the Commission has further identified two separate product markets for: (i) FTA TV channels; and (ii) pay-TV channels. The Commission has further concluded that within the pay-TV channels market, there are separate markets for: (i) premium pay-TV channels; and (ii) basic pay-TV channels.[45]

(83) In previous decisions, the Commission also examined a number of other potential segmentations, including: (i) genre or thematic content (such as films, general entertainment, sports, factual content, news, youth channels, and others); (ii) linear channels vs non-linear services (VOD, PPV); and (iii) the different means of infrastructure used for the delivery to the viewer (cable, satellite, terrestrial TV and IPTV).[46] It has ultimately left the market definition open in all these regards.

(84) The market investigation did not provide definite views as regards the definition of the relevant product market. While a broad majority of both TV broadcasters and TV distributors considered cable, satellite, IPTV, terrestrial TV, and OTT substitutable,[47] the views on a distinction between FTA channels and pay-TV channels and by genre were more diverse. On the one hand, the majority of TV

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45 Commission decision of 15 June 2018 in Case M.8861 – *Comcast / Sky;* Commission decision of 24 February 2015 in Case M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*.

46 Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*; Commission decision of 24 February 2015 in Case M.7194 – *Liberty Global / Corelio / W&W / De Vijver Media*.

47 Replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 19; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 19; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 21; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 21.

distributors agreed with the Commission's decisional practice in this regard.[48] On the other hand, a number of replies from TV broadcasters raised doubts regarding the relevance of a distinction between FTA and (premium and basic) pay-TV channels or a general distinction by genres.[49] However, in relation to factual and children's channels, the overall majority of respondents stressed the particular content offerings based on the interests of the respective target audience. In the respondents' view, these particularities make these two genres too specific from a consumer perspective to be substitutable by other genres.[50]

(85) In light of the above, the Commission concludes that the relevant product markets for the purpose of this Decision are, irrespective of the type of infrastructure used for their transmission, each of the markets for the wholesale supply of (i) FTA, (ii) basic Pay-TV and (iii) premium Pay-TV channels. The question whether these markets should be further segmented based on the genre of the channel can be left open, as the commitments offered by TWDC solve the competition concerns also under any narrower product market definition (see Section 6).

4.7.2. Geographic market definition

(86) The Notifying Party submits that since languages may represent an important factor in the viewer's decision to watch certain channels, it may theoretically be possible to identify markets that are narrower or larger than national in geographic scope where either two or more different languages are spoken by significant proportions of the population or the same language is spoken in two or more neighbouring countries. The Notifying Party further submits that audience shares for geographic regions wider than single EEA countries have limited value since channels are generally licensed by wholesale suppliers to retail platforms on a national basis and the same channels may not be available throughout a linguistically homogenous, supra-national region. Regardless of the geographic market definition, the Notifying Party submits no competition concerns would arise and the precise geographic scope can be left open.

(87) The Commission has previously considered that the market could be national,[51] sub-national[52] or by linguistic region encompassing more than one Member State.[53]

(88) A broad majority of respondents to the market investigation indicated that TV channels are licensed on a national level or within a linguistic region.[54]

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48 Replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, questions 16-20; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 16-20.

49 Replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, questions 14-16; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 14-16.

50 Replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, questions 19-20; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 19-20; replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, questions 17-18; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 17-18.

51 Commission decision of 21 December 2011 in Case M.6369 - *HBO/Ziggo/HBO Nederland*, recital 39; Commission decision of 14 April 2013 in Case M.6880 - *Liberty Global/Virgin* Media, recital 41; Commission decision of 30 May 2018 in Case M.7000 - *Liberty Global/Ziggo*.

52 Commission decision of 24 February 2015 in Case M. 7194 - *Liberty Global / Corelio / W&W / De Vijver Media*.

53 Commission decision of 21 December 2010 in Case M.5932 - *News Corp/BskyB*, recitals 86–88; *Liberty Global/Virgin Media*.

(89) In any event, for the purpose of this Decision, the exact geographic market definition can be left open, as the commitments offered by TWDC solve the competition concerns also under any plausible geographic market definition (see Section 6).

4.8. Retail supply of TV services

(90) In the market for the retail provision of TV services, the suppliers of linear and non-linear (mainly Video-On-Demand, "VOD") TV services serve end customers who wish to purchase such services. The TV services supplied by TV distributors to end users consist of: (i) packages of linear TV channels (which they have either acquired or produced themselves); and (ii) content aggregated in non-linear services, such as Video on Demand ("VOD"), Subscription VOD ("SVOD"), Transactional VOD ("TVOD") and Pay Per View ("PPV"). TV content can be delivered to end users through a number of technical means including cable, satellite and IPTV[55]. So-called over-the-top ("OTT")[56] players deliver channels and content in both a linear and non-linear fashion through the use of the internet.

(91) TWDC (but not Fox) offers retail TV services across the EEA to end consumers. TWDC's retail TV services include DisneyLife which is available only in the UK and Ireland and ESPN Player, an OTT service available throughout the EEA.

4.8.1. Product market definition

(92) The Notifying Party submits that it is not relevant to delineate the market for the retail provision of TV services based on the segmentation analysed by the Commission in its previous decisions[57], namely: (i) the type of technology used; (ii) the nature of TV services provided in terms of pay-TV and Free-To-Air ("FTA") TV services; and, (iii) the nature of TV services provided in terms of linear and non-linear services.

(93) In its previous decisions the Commission has considered the retail provision of FTA TV and pay-TV services as separate markets but ultimately left open the product market definition[58]. The Commission also considered whether retail TV

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54 Replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018 Q7; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 20; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 22.

55 IPTV is the abbreviation for Internet Protocol TV; it is a system through which television services are delivered using the Internet protocol over a packet-switched network such as the internet, instead of being delivered through traditional terrestrial, satellite signal and cable television formats.

56 Over-the-top (OTT) is any application or service that provides a product over the Internet and bypasses traditional distribution. Applications and services that are provided as 'over-the-top' are most typically related to media and communication.

57 Commission decision of 21 December 2010 in Case M.5932 - *News Corp/BskyB*; Commission decision of 22 September 2006 in Case M.4353 - *Permira/All3Media Group*; Commission decision of 15 April 2013 in Case M.6880 - *Liberty Global/Virgin Media*; Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*.

58 Commission decision of 18 July 2007 in Case M.4504 - *SFR/Télé 2 France*, recital 40; Commission decision of 25 June 2008 in Case M.5121 - *News Corp / Premiere*, recital 20; Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*, paragraph 97; Commission decision of 3 August 2016 in Case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 56; Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global / Corelio / W&W / De Vijver Medi*a, recital 119-120;

can be segmented further according to: (ii) linear vs non-linear TV services[59]; (iii) according to distribution technologies (e.g. cable, OTT, satellite, IPTV or terrestrial)[60]; and (iv) premium pay-TV vs basic pay-TV services[61] but, has left the market definition open with regard to each of these potential sub-segments.

(94) With regards to a possible segmentation between FTA and pay-TV services, most of the respondents to the market investigation indicated that such a distinction is still relevant in the present case.[62] Most of the respondents to the market investigation further noted that a segmentation between basic and premium pay-TV services would also be relevant. [63]

(95) With regards to a possible segmentation of TV retail services according to linear vs non-linear TV services, the market investigation provided mixed results. In particular, some respondents such as Telia and MEO noted that catch up services are often acquired together with linear content. Some content like SVOD, TVOD and AVOD are acquired separately. [64]

(96) With regards to a possible segmentation of TV retail services depending on the type of infrastructure used for their transmission, the results of the market investigation provided mixed results with some respondents arguing that most of the content is available on each technology and it does not matter how it reaches the household, while others stated that different infrastructures often have a varying quality, different types of services and as well as customer needs.[65]

(97) Finally, the market investigation provided mixed results on whether VOD services by OTT players (such as Amazon, Netflix) should be considered as alternatives or complements to retail pay-TV services. On the one hand, some respondents, such as Magyar Telekom, noted that SVOD services are acquired as

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Commission decision of 25 June 2008 in Case M.5121 - *News Corp/Premiere*, recitals 15 and 21; Commission decision of 10 October 2014 in Case M.7000 - *Liberty Global/Ziggo*, recital 108.

59 Commission decision of 6 February 2018 in Case M.8665 – *Discovery / Scripps*, paragraph 33; Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*, paras 98 and 99; Commission decision of 3 August 2016 in Case M.7978 – *Vodafone/Liberty Global/Dutch JV*, para 58; Commission decision of 24 February 2015 in case M.7194 - *Liberty Global / Corelio / W&W / De Vijver Media*, recital 124; Commission decision of 25 June 2008 in Case M.5121 - *News Corp/Premiere*, recital 21; Commission decision of 10 October 2014 in Case M.7000 - *Liberty Global/Ziggo*, recitals 109–110.

60 Commission decision of 6 February 2018 in Case M.8665 – *Discovery / Scripps*, paragraph 33; Commission decision of 7 April 2017 in Case M.8354 – *Fox / Sky*, paragraph 100; Commission decision of 3 August 2016 in Case M.7978 – *Vodafone/Liberty Global/Dutch JV*, paragraph 62; Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global / Corelio / W&W / De Vijver Media*, recital 127; Commission decision of 25 June 2008 in Case M.5121 - *News Corp/Premiere*, recital 22; Commission decision of 21 December 2010 in Case M.5932 - *News Corp/BskyB*, recital 105; Commission decision of 10 October 2014 in Case M.7000 - *Liberty Global/Ziggo*, recital 113.

61 Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global / Corelio / W&W / De Vijver Media*, recital 119.

62 Replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 26.

63 Replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 27.

64 Replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 25.

65 Replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 31.

a complement of basic pay-TV package. On the other hand, other respondents, such as Orange, indicated that OTT players are acquiring significant audio-visual content and they compete directly with their premium pay-TV services. [66]

(98) Given the fact that the assessment of the Transaction would remain the same whether (i) FTA services and pay-TV services, (ii) linear pay-TV services and non-linear pay-TV services, (iii) different distribution technologies, and (iv) SDUs and MDUs are considered to belong to the same product market or to give rise to separate markets, the exact scope of the relevant market for TV services can be left open in this regard.

(99) Therefore, the Commission considers that for the purpose of this Decision the exact product market definition can be left open as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

4.8.2. Geographic market definition

(100) The Commission has in the past considered that the geographic scope of the market for the retail provision of TV services could be national, since providers of retail TV services compete on a nationwide basis, or limited to the coverage area of each cable operator.[67]

(101) The Notifying Party considers that the question whether the scope of the market for the retail provision of TV services should be either national, since TV distributors compete on a nationwide basis, or limited to the coverage area of each cable operator, could be left open.

(102) Most of the respondents to the market investigation consider that the market for the retail provision of TV services is national in scope.[68]

(103) In any event, the Commission considers that the exact geographic market definition can be left open in this case as the Transaction does not raise serious doubts as to its compatibility with the internal market under any plausible market definition.

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66 Replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 28.

67 Commission decision of 26 February 2007 in Case M.4521 - *LGI/Telenet*, recital 25; Commission decision of 24 February 2015 in Case M.7194 - *Liberty Global/Corelio/W&W/De Vijver Media*, recital 139; Commission decision of 25 June 2008 in Case M.5121 - *News Corp/Premiere*, recital 24; Commission decision of 25 January 2010 in Case M.5734 - *Liberty Global Europe/Unitymedia*, recitals 40 and 43; Commission decision of 21 December 2010 in Case M.5932 - *NewsCorp/BSkyB*, recital 109; Commission decision of 21 December 2011 in Case M.6369 - *HBO/Ziggo/HBO Nederland*, recital 42; Commission decision of 15 April 2013 in Case M.6880 - *Liberty Global/Virgin Media*, recital 54; Case M.7000 – *Liberty Global/Ziggo*, recital 118.

68 Replies to Questionnaire Q1 to Mobile Operators of 4 September 2018, question 22; replies to Questionnaire Q2 to Fixed Operators of 4 September 2018, question 22.

5. COMPETITIVE ASSESSMENT

5.1. Analytical framework

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

(105) In this respect, a merger may entail horizontal and/or non-horizontal effects. Horizontal effects are those deriving from a concentration where the undertakings concerned are actual or potential competitors of each other in one or more of the relevant markets concerned. Non-horizontal effects are those deriving from a concentration where the undertakings concerned are active in different relevant markets.

(106) As regards non-horizontal mergers, two broad types of such mergers can be distinguished: vertical mergers and conglomerate mergers.[69] Vertical mergers involve companies operating at different levels of the supply chain.[70] Conglomerate mergers are mergers between firms that are in a relationship which is neither horizontal (as competitors in the same relevant market) nor vertical (as suppliers or customers).[71]

(107) A case where a merger entails both horizontal and non-horizontal effects may for instance be when the merging firms are not only in a vertical or conglomerate relationship, but are also actual or potential competitors of each other in one or more of the relevant markets concerned. In such a case, the Commission will appraise horizontal, vertical and/or conglomerate effects in accordance with the guidance set out in the relevant notices.[72]

(108) The Commission appraises horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Horizontal Merger Guidelines.[73] Additionally, the Commission appraises non-horizontal effects in accordance with the guidance set out in the relevant notice, that is to say the Non-Horizontal Merger Guidelines.[74]

5.1.1. Horizontal effects

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

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69 Non-Horizontal Merger Guidelines, recital 3.

70 Non-Horizontal Merger Guidelines, recital 4.

71 Non-Horizontal Merger Guidelines, recital 5.

72 Non-Horizontal Merger Guidelines, recital 7.

73 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.

74 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.

(110) As regards horizontal non-coordinated effects, under the substantive test set out in Article 2(2) and (3) of the Merger Regulation, also mergers that do not lead to the creation or the strengthening of the dominant position of a single firm may be incompatible with the internal market. Indeed, the Merger Regulation recognises that in oligopolistic markets, it is all the more necessary to maintain effective competition.[75] This is in view of the more significant consequences that mergers may have on such markets. For this reason, the Merger Regulation provides that "*under certain circumstances, concentrations involving the elimination of important competitive constraints that the merging parties had exerted upon each other, as well as a reduction of competitive pressure on the remaining competitors, may, even in the absence of a likelihood of coordination between the members of the oligopoly, result in a significant impediment to effective competition*".[76]

(111) 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. 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.[77] Finally, the Horizontal Merger Guidelines describe a number of factors, which could counteract the harmful effects of a merger on competition, including the likelihood of buyer power, entry and efficiencies.

(112) A merger in a concentrated market may also significantly impede effective competition due to horizontal coordinated effects where, through the creation or the strengthening of a collective dominant position, it increases the likelihood that firms are able to coordinate their behaviour and raise prices, even without entering into an agreement or resorting to a concerted practice within the meaning of Article 101 TFEU. A merger may also make coordination easier, more stable or more effective for firms that were already coordinating before the merger, either by making the coordination more robust or by permitting firms to coordinate on even higher prices.[78]

(113) To assess whether a merger gives rise to horizontal coordinated effects, the Commission should examine, first, whether it would be possible to reach terms of coordination and, second, whether the coordination would be likely to be sustainable.[79]

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75 Merger Regulation, recital 25.

76 Merger Regulation, recital 25. Similar wording is also found in paragraph 25 of the Horizontal Merger Guidelines. See also Commission decision of 2 July 2014 in Case M.7018 – *Telefónica Deutschland/E-Plus*, recital 113; Commission decision of 28 May 2014 in Case M.6992 – *Hutchison 3G UK/Telefónica Ireland*, recital 179; Commission decision of 12 December 2012 in Case M.6497 – *Hutchison 3G Austria/Orange Austria*, recital 88.

77 Horizontal Merger Guidelines, paragraph 26.

78 Horizontal Merger Guidelines, paragraph 39.

79 Horizontal Merger Guidelines, paragraph 42.

5.1.2. Vertical effects

(114) A merger is said to result in foreclosure where actual or potential rivals' access to supplies or markets is hampered or eliminated as a result of the merger, thereby reducing these companies' ability and/or incentive to compete.[80] Such foreclosure may discourage entry or expansion of rivals or encourage their exit. Such foreclosure is regarded as anti-competitive where the merged entity — and, possibly, some of its competitors as well — are as a result able to profitably increase the price charged to consumers.[81]

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

5.2. Introduction

(116) As noted, the Transaction gives rise to both horizontal overlaps and vertical links between the activities of TWDC and Fox.

5.3. Horizontally affected markets

5.3.1. Production and licensing of distribution rights of films for theatrical exhibition

5.3.1.1. Notifying Party's views

(117) The Notifying Party submits that the Transaction will not give rise to unilateral effects concerns in the market for the production and supply of films for theatrical release in any EEA Member State because: (i) there are strong competitors present on the market, market entry is common, and the Parties are not each other's closest competitor; (ii) the combined market share of the Parties remains modest; (iii) even the Parties' modest market share is not a reliable indicator of their competitive position, due to the hit-driven nature of the market; (iv) the merged entity will continue to be constrained by third-party distributors; and (v) TWDC remains committed to producing high-quality content.

5.3.1.2. Commission's assessment

(118) The Parties' activities overlap in a total of 15 EEA Member States, where the Parties' activities overlap in the production and licensing of distribution rights of films for theatrical release. These Member States are: Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Greece, Hungary, Iceland, Latvia, Lithuania, Malta, Portugal, Romania, Slovakia and Slovenia.

(a) Production and licensing of distribution rights of films for theatrical exhibition, all producers

(119) In the overall market encompassing all film producing studios, the merged entity's market shares in 2017, calculated on the basis of gross box office receipts would

80 Non-horizontal Merger Guidelines, paragraph 29.

81 Non-horizontal Merger Guidelines, paragraph 29.

remain below 25% at EEA level (see Table 1) and in each of the Member States where the Parties' activities overlap, except in Bulgaria ([30-40]%), the Czech Republic ([30-40]%) and Greece ([20-30]%).[82]

(120) The Commission notes that the increment brought about by the Transaction based on box office revenues of Fox in Bulgaria would be only [0-5]% and in Czech Republic only [0-5]%. In Greece the increment would be [5-10]% but the combined market share would only marginally exceed [20-30]%.

(121) The Commission further notes that in all the affected markets, the merged entity, post-Transaction would continue to face competition from a number of well-established competitors, such as, Universal, Warner Bros, Sony and Lionsgate. A number of domestic producers such as StudioCanal, Constantin Films and Medusa also have a significant presence, particularly in their home markets, namely in France in the case of StudioCanal, Germany in the case of Constantin Films and Italy in the case of Medusa.

(122) In addition, the Parties do not appear to be particularly close competitors in the production of films for theatrical release. TWDC has a film slate that can generally be described as focusing on family films with a focus on appealing to young and adult audiences alike whereas Fox has a far more diverse portfolio of films that can be more generally described as dramas. The Parties also have clearly distinct business models with TWDC focusing on producing fewer films of bigger budgets whereas Fox produces more films several of them through its Fox Searchlight arm that specialised in so called "arthouse" movies. This difference has also been confirmed by the results of the market investigation that identified Universal and Warner Bros as TWDC's closest competitor more often than Fox.[83]

Table 1: Production market shares, EEA, all producers, based on gross box office revenues, 2013-2017 (%)

Producer	2013	2014	2015	2016	2017	Average
TWDC	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Fox	[5-10]%	[10-20]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Combined	**[10-20]%**	**[10-20]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**
Universal	[10-20]%	[5-10]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Warner Bros.	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
Sony	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%
Lionsgate	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
StudioCanal	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Paramount	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%

82 The main source of all box office revenue data referred to throughout the Form CO and this Decision is ComScore (www.comscore.com). Although ComScore includes no country specific information for Cyprus and Malta, the Notifying Party confirms that the merged entity's market shares in those countries would not exceed the 40% threshold (see reply to Question 1, RFI 15).

83 Replies to Questionnaire 1 to Producers of 17 September 2018, questions 35 and 37; replies to Questionnaire Q2 to Distributors of 17 September 2018, questions 23 and 25; replies to Questionnaire Q6 to Distributors of 17 September 2018, questions 23 and 25; replies to Questionnaire Q3 to Exhibitors of September 2018, questions 21 and 23.

Producer	2013	2014	2015	2016	2017	Average
Constantin	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Gaumont	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Pathé	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
EuropaCorp	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Medusa	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
STX	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Nordisk	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
A24	-	-	-	-	[0-5]%	[0-5]%
Others	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: ComScore and IMDb (Form CO, Chapter 1A)

(123) A number of respondents to the market investigation raised a general concern about the Transaction likely leading to a decrease in the number of films for theatrical release produced, especially in case TWDC, post-Transaction, applies its business model of producing fewer but bigger productions to the Fox pipeline.[84] Indeed, when market conditions are such that the competitors of the merging parties are unlikely to increase their supply substantially if prices increase, the merging parties may have an incentive to reduce output below the combined pre-merger levels, thereby raising market prices.[85]

(124) The Commission notes first, that films have all the characteristics of differentiated rather than homogeneous products and although capacity constraints may also be important where firms offer differentiated products this is more likely to be the case when goods are relatively homogeneous.[86] Second, during the market investigation there have been no indications that the film production industry is characterised by capacity constraints in any stage of the production process. It is therefore likely that any output decrease by the merged entity post-Transaction, that would free-up space in exhibitors' screens, would be countered by an output expansion by competing film producing studios. […].

(125) One respondent raised a specific concern with respect to the impact of the Transaction in the distribution of films for theatrical release in Portugal.[87] According to this concern, in the event that, post-Transaction, TWDC decided to distribute Fox films through the distributor currently licenced to distribute TWDC films in Portugal, this distributor would then represent more than 80% of the distribution market and more than 60% of the exhibition market. The Commission notes that currently, neither TWDC nor Fox are vertically integrated into the distribution of films in Portugal, but rather licence their films to third-party distributors. The Transaction will therefore have no structural effect on the level of distribution in Portugal. This is recognized by the very same respondent that

84 Replies to Questionnaire Q1 to Producers of 17 September 2018, questions 76 and 77; replies to Questionnaire Q2 to Distributors of 17 September 2018, questions 43 and 44; replies to Questionnaire Q6 to Distributors of 17 September 2018, questions 43 and 44; replies to Questionnaire Q3 to Exhibitors of September 2018, questions 44 and 45.

85 See Horizontal Merger Guidelines, paragraph 32.

86 See Horizontal Merger Guidelines, paragraph 35.

87 Reply by Big Picture 2 Film, SA, to Questionnaire Q2 to distributors of 17 September 2018.

notes that "[w]*e have nothing against the merging of Fox into Disney*",[88] but rather seems to be concerned about the already high level of concentration at a part of the value chain where the Parties are not present. The concern is therefore not merger-specific.

(126) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the production and supply of films for theatrical release that includes all producers.

(b) Production and licensing of distribution rights of films for theatrical exhibition, US producers

(127) In the narrower segment encompassing only US film producing studios the merged entity's market shares in 2017, calculated on the basis of gross box office receipts would still remain modest at EEA level at [30-40]%. As for the Member States where the Parties' activities overlap the merged entity's market shares would remain below 30% in all cases except in Bulgaria ([30-40]%), the Czech Republic ([30-40]%) and Greece ([30-40]%).

Table 2: Production market shares, EEA, US producers, based on gross box office revenues (%)

Producer	2013	2014	2015	2016	2017	Average
TWDC	[10-20]%	[5-10]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%
Fox	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Combined	**[20-30%**	**[20-30]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[20-30]%**
Universal	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Warner Bros.	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%
Sony	[10-20]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Lionsgate	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%
Paramount	[5-10]%	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[5-10]%
Others	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: ComScore and IMDb (Form CO, Chapter 1A)

(128) The Commission notes that other than the absence of domestic competitors such as StudioCanal, Constantin and Medusa in this narrower segment the competitive assessment of Section 5.3.1.2.(a) applies *mutatis mutandis*. The Commission considers that even in the absence of domestic production studios in this market segment the presence of the rest of the US majors such Universal, Warner Bros, Sony, Lionsgate and Paramount would suffice to guarantee that post-Transaction the merged entity faces sufficient competition in the production and licensing of distribution rights of films for theatrical exhibition.

88 Reply by Big Picture 2 Films, SA, to Questionnaire Q2 to distributors of 17 September 2018, question 47.

(129) Moreover, TWDC and Fox do not appear to be close competitors in the market for the production of US films for theatrical release for the same reasons outlined in paragraph (122) above.

(130) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the production and supply of films for theatrical release that includes only US producers.

5.3.2. Distribution of films for theatrical exhibition

(131) The Parties are active in the distribution of films for theatrical release in a number of Member States. Both TWDC and Fox have distribution activities in: Austria, Belgium, France, Germany, Ireland, Italy, Luxembourg, Spain, Sweden and the UK.[89] In addition, TWDC, but not Fox, has distribution activities in: Denmark, Finland, the Netherlands, Poland, Liechtenstein and Norway.

(132) While the Parties mostly distribute their own films on an exclusive basis, in some Member States they also carry out the theatrical distribution for other producers' films. TWDC distributes: In Finland for Sony, in Germany for Universum, and in Liechtenstein for Paramount.[90] Fox distributes: in Belgium and Luxembourg for Warner Bros, in Germany for Prokino, Majestic, eOne and SquareOne, in Italy for Paramount, in the UK for Pathé, in Sweden for Nordisk and Warner Bros, and throughout the EEA for Regency Entertainment.[91]

5.3.2.1. Notifying Party's views

(133) The Notifying Party submits that the Transaction will not give rise to unilateral effects in the market for the distribution of films for theatrical release in any EEA Member State. This is because the market for distribution is fragmented and TWDC will still face a large number of rivals in every Member State, including local distributors and providers of other content.[92] Furthermore, the Notifying Party submits that the combined market shares of the Parties are limited, especially considering the hit-driven nature of theatrical distribution. Finally, the Notifying Party argues that exhibition markets are highly concentrated with few exhibitors present in each Member State, capable of constraining distributors. The Notifying Party submits that these arguments are applicable even if one were to consider a potential segmentation between US and non-US films.

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89 The Notifying Party has provided market shares based on box office receipts collected from exhibitors. The data has been sourced primarily from IMDb and ComScore. Since ComScore provides data for Belgium & Luxembourg and for Ireland & the UK together, the Notifying Party has provided data for those countries together.

90 ComScore does not provide data for Liechtenstein and the Notifying Party was not able thus to provide data for Liechtenstein. In any case, Fox is not active in the distribution of films for theatrical release in Liechtenstein, therefore there is no overlap between the Parties' activities.

91 Fox has a minority interest in Monarchy Enterprises Holdings B.V., which in turn owns, among others, Regency Entertainment Inc., which in turn owns a group of companies operating under the names Regency and New Regency (together these entities are referred to as "Regency"). Fox distributes Regency's films alongside its own films throughout the EEA.

92 Non-film providers distribute content other than films, such as the broadcast of live including sports, concerts etc.

5.3.2.2. The Commission's assessment

(134) The theatrical distribution activities of the Parties give rise to affected markets in all Member States where their activities overlap; both on the overall market for the distribution of all films as well as on the narrower plausible market comprising the distribution of only US films. These Member States are: Austria, Belgium & Luxembourg, France, Germany, Italy, Spain, Sweden and the UK & Ireland. However, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in any EEA Member State for the reasons set out below.

(a) Distribution of all films for theatrical exhibition

Table 3: 2017 Theatrical distribution of All films market shares, based on gross box office revenues (%)

	Austria	Belgium & Luxembourg	France	Germany	Italy	Spain	Sweden	UK & Ireland
TWDC	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%
Fox	[10-20]%	[20-30]%	[5-10]%	[5-10]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%
Combined	**[20-30]%**	**[40-50]%**	**[20-30]%**	**[30-40]%**	**[20-30]%**	**[30-40]%**	**[50-60]%**	**[30-40]%**
Others	[70-80]%	[50-60]%	[40-50]%	[70-80]%	[70-80]%	[60-70]%	[40-50]%	[50-60]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: ComScore and IMDb Form CO (Chapter 2A)

(135) First, in most Member States the combined market share of the Parties will remain modest. Post-Transaction, the merged entity will hold market shares, based on box office revenue, below [30-40]% in the distribution of all films in all Member States with the exception of Sweden and Belgium & Luxembourg.

(136) Second, the merged entity will still face significant competitive constraints post-Transaction. A large number of competitors will remain in all Member States where the Parties are active, including the distribution arms of other US majors, but also local independent distributors that hold strong positions in their own national markets.[93]

(137) Third, the Parties are not particularly close competitors and the Transaction will not significantly alter TWDC's position vis-à-vis exhibitors in a way that would allow it to impose significantly different exhibition terms than pre-Transaction anywhere in the EEA.

(138) In line with the results of the market investigation concerning the production of films as explained above (see paragraph (122)), the market investigation has showed that TWDC and Fox are not particularly close competitors at the level of theatrical distribution of films either. Exhibitors consider TWDC's films to be

[93] Largest competitors of TWDC and Fox are: in Austria - Constantin Film [20-30%], in Belgium & Luxembourg - Sony ([20-30]%), in France - Universal ([10-20]%), in Germany - Universal ([10-20]%), in Italy - Warner Bros ([10-20]%), in Spain - Universal ([20-30]%), in Sweden - UIP ([20-30]%), in UK & Ireland - Universal ([10-20]%).

particularly important for their portfolio.[94] It releases a limited number of films per year, but represents nevertheless a share of exhibitors' turnover similar to that of other US majors due to the success of these films. On the other hand, Fox releases a significantly larger number of films that are more varied in content and on average less successful than those of TWDC. Several respondents explained that while TWDC is more focused on large blockbusters, Fox has a more diversified offer including arthouse type films through its Searchlight branch. The closest competitor of TWDC does not appear to be Fox, but Universal or Warner Bros in most instances, both at production level but also in terms of distribution.[95] The addition of Fox' films therefore will not significantly increase TWDC's bargaining position vis-à-vis exhibitors.

(139) In addition, competition between films is largely determined by respective film's release schedule. The largest part of the box office revenue of a film is achieved during the first weeks of exhibition. The Parties' films achieve […]% of the box office revenue during the first two weeks of exhibition and […]% during the first three.[96] The Parties rarely release films within one or two weeks of each other's. In 2017, there was only one weekend where both Parties released a film.[97] The Commission considers that this is another indication of the Parties' not being close competitors pre-Transaction.

(140) In the same line, it is unlikely that the merged entity will occupy more screen space to the detriment of smaller, local producers, given the incentive is rather to limit the number of its own films that are screened at the same time to avoid competition for viewers between them, thereby freeing screens to other producers' films. In terms of offer, aside from TWDC and Fox, there are several distributors of US and non-US films carrying other films that exhibitors can screen. TWDC and Fox distributed together only 101 films, out of the 331 films distributed by US films distributors in the EEA in 2017 and the additional 2721 non-US films.[98]

(141) Similarly, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market even in the markets where the merged entity will hold more than [30-40]% shares, namely Belgium & Luxembourg and Sweden.[99] The higher combined share of the Parties in both

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94 Replies to Questionnaire Q3 to exhibitors of 17 September 2018, question 25.

95 Replies to Questionnaire Q6 to distributors of 17 September 2018, questions 22 to 26 and Replies to Questionnaire Q3 to exhibitors of 17 September 2018, questions 21 to 27.

96 Commission's estimates based on film revenue data provided by the Parties in Annexes 5.1 and 5.2 in reply to RFI 5.

97 Notifying Party's Submission on Theatrical Distribution of 15 October 2018.

98 Notifying Party's Submission on Theatrical Distribution of 15 October 2018.

99 It must be noted that the Notifying Party argues that sub-distribution agreements whereby Fox distributes films for Warner Bros and Regency in Belgium & Luxembourg, as well as Nordisk in Sweden should be excluded for the purpose of assessing the Parties' position on the market for the theatrical distribution of films. This is because producers retain rights of approval or control over certain key terms and parameters of distribution (such as release dates). The Commission however considers that the contractual arrangement between producer and distributor does not affect the bargaining position of distributors vis-á-vis exhibitors. As a result, sub-distribution agreements are treated as equivalent to full distribution agreements. If sub-distribution would be excluded, the market shares of the Parties would be [20-30]% (TWDC [10-20]%; Fox [5-10]%) in Belgium & Luxembourg and [30-40]% (TWDC [20-30]%; Fox [5-10]%) in Sweden for the distribution of all films, [30-40]% (TWDC [20-30]%; Fox [10-20]%) in Belgium & Luxembourg and [40-50]% (TWDC [20-30]%; Fox [10-20]%) in Sweden for the distribution of US films.

territories can be explained by Fox's distribution activities on behalf of Warner Bros and Regency in Belgium & Luxembourg and Warner Bros, Regency and Nordisk in Sweden. Moreover, the 2017 market shares of Fox, both in Belgium & Luxembourg and Sweden, include the distribution of DreamWorks Animation's films, while that distribution agreement ended in December 2017.

(142) In Belgium & Luxembourg, the combined market share of the Parties will be [40-50]%. It will still face important competitors such as Sony ([20-30]%) and the local distributor Belga Films ([10-20]%), which carries the distribution of local productions but also large films such as "The Hunger Games" series of Lionsgate. Kinepolis is also an important distributor in Belgium with a share of [5-10]%, which is furthermore integrated downstream on the exhibition market in Belgium and Luxembourg where it is the largest exhibitor.

(143) Fox distributes Regency and Warner Bros' films in Belgium & Luxembourg and distributed DreamWorks Animation's films until 31 December 2017. The end of the agreement with DreamWorks Animation will carry a reduction in Fox's position on the distribution market as of 2018.[100] […][101] If Fox would cease distributing for Warner Bros and Regency, in addition to DreamWorks, Fox's market share in Belgium & Luxembourg in 2017 would be [5-10]%in the theatrical distribution of all films.[102]

(144) In addition, with respect to rental fees contracted with exhibitors in Belgium, they are capped by law at 50%.[103] [Details on the Parties' contractual arrangements], TWDC will not be able to increase rental fees to a significant extent.

(145) In Sweden, the combined market share of the Parties will be [50-60]%. It will still face important competitors such as UIP, distributing for Paramount, Universal and Sony ([20-30]%) and the local distributor SF Studios ([10-20]%), which carries the distribution of local productions and large films such as "The Hobbit" series of Warner Bros.

(146) Fox distributes Regency, Warner Bros and Nordisk films in Sweden and distributed DreamWorks Animation's films until 31 December 2017. The end of the agreement with DreamWorks Animation will carry a reduction in Fox's position on the distribution market as of 2018.[104] [Details on Fox's contractual arrangements].[105] [Details on Fox's contractual arrangements].[106] It is also unclear whether it would be in the interest of Warner Bros and Nordisk to keep distributing their films in Sweden through the distribution arm of a large competitor also on the upstream film production level.

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100 Notifying Party's Submission on Theatrical Distribution of 15 October 2018, Annex 1.

101 Reply to question 30 of RFI 10, Annex 31.1.

102 Form CO, Chapter 4A.

103 Article 2 of the ministerial decree of 13 March 1986 on "Rental charges for films intended for commercial screening". Rental fees can be exceptionally increased to 55% in certain circumstances through ministerial decree, but this is rarely used.

104 Notifying Party's Submission on Theatrical Distribution of 15 October 2018, Annex 1.

105 Reply to question 30 of RFI 10, Annex 31.1.

106 Form CO, Chapter 2A - Theatrical distribution of films, footnote 54.

(147) If Fox would cease distributing for Warner Bros, Regency and Nordisk, in addition to DreamWorks, Fox's market share in Sweden in 2017 would be [5-10]% in the theatrical distribution of all films.[107]

(148) Furthermore, despite the Parties distributing a larger slate of films in Belgium & Luxembourg and Sweden, based on information provided by the Notifying Party, it is unclear whether the fact of controlling more films (including via distribution) results in a disproportionally larger share of revenues for the distributor.[108]

(149) There is also no practice of bundling or block booking films for theatrical release in the industry, nor have either of TWDC or Fox ever engaged in them anywhere in the EEA: the breadth of the portfolio of distributors is unrelated to the booking of the films which is done on an individual basis.[109]

(150) In the course of the market investigation, some exhibitors and distributors indicated that they feared that post-Transaction, TWDC would try to impose exhibition terms more favourable to TWDC which they would not be able to refuse.[110] However, the Commission does not consider that the Transaction will allow TWDC to worsen exhibition terms due to the addition of Fox films for all reasons explained above (see paragraphs (137) to (139)).

(151) Exhibitors also fear that this may result in reduced screen space especially for smaller domestic producers, preventing exhibitors from offering a diversified portfolio to cover all audiences' tastes. Similarly, the Commission does not consider that the Transaction would lead to TWDC occupying more space, as described in paragraph (140). Moreover, the Commission notes that the concern that the Parties would occupy more screen space is in contradiction with the concern that fewer films will be produced (see paragraph (123)).

(152) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the distribution of films for theatrical release that includes all films in any EEA Member State.

(b) Distribution of US films for theatrical exhibition

(153) Even on the narrower market for the distribution of US films, the combined market shares of the Parties are still below [30-40]% in all affected markets with the exception of Belgium & Luxembourg and Sweden.

[107] Form CO, Chapter 4A.

[108] Notifying Party's Submission on Theatrical Distribution of 15 October 2018, Annex 5.

[109] Notifying Party's Submission on Theatrical Distribution of 15 October 2018.

[110] Replies to Questionnaire Q3 to exhibitors of 17 September 2018, questions 41 and 42.

Table 4: 2017 Theatrical distribution of US films market shares, based on gross box office revenues (%)

	Austria	Belgium & Luxembourg	France	Germany	Italy	Spain	Sweden	UK & Ireland
TWDC	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%
Fox	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%
Combined	**[30-40]%**	**[50-60]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[60-70]%**	**[30-40]%**
Universal	[10-20]%	-	[20-30]%	[20-30]%	[20-30]%	[20-30]%	-	[10-20]%
Warner Bros	[10-20]%	-	[10-20]%	[10-20]%	[20-30]%	[10-20]%	-	[10-20]%
Sony	[10-20]%	[30-40]%	[10-20]%	[10-20]%	-	[10-20]%	-	[10-20]%
Others	[20-30]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: ComScore and IMDb Form CO (Chapter 2A)

(154) The Commission notes that other than the absence of domestic competitors focusing on the distribution of non-US films in this narrower segment, the competitive assessment of Section 5.3.2.2.(a) applies *mutatis mutandis*. If Fox's distribution agreements would be excluded, Fox's 2017 share in the market for distribution of US films would be [10-20]% in Belgium & Luxembourg and [10-20]% in Sweden. The Commission considers that the presence of the rest of the US majors such as Universal, Sony and Paramount would suffice to guarantee that post-Transaction the merged entity faces sufficient competition in the distribution of films for theatrical exhibition.

(155) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the distribution of US films for theatrical release.

5.3.3. Distribution of home entertainment content

(156) As indicated in paragraphs (39) to (41) above, TWDC and Fox are active in the physical distribution of home entertainment content either directly or indirectly through third party distributors.

(157) TWDC and Fox license their home entertainment content for digital distribution directly to retailers across all EEA countries.

(158) With regards to films, while the Parties mostly distribute their own films exclusively, in some Member States they also carry out the theatrical distribution for other producers' films. TWDC distributes […] films across the EEA. Fox distributes:

- In Belgium […].
- In France […].
- In Germany […].
- In Luxembourg […].

- In the Netherlands […].
- In Spain […].
- In Denmark, Finland, Sweden, Norway […].
- In United Kingdom […].

(159) With regards to the supply of digital home entertainment other TV content, such as TV-series, Fox licenses its digital home entertainment content across all EEA countries while TWDC is only active in Austria, France, Germany and the UK.

(160) As indicated in paragraphs (40) and (41), the Parties are also active in almost all EEA countries in the supply of physical home entertainment other TV content, such as TV-series.[111]

5.3.3.1. Notifying Party's views

(161) The Notifying Party submits that the Transaction will not give rise to unilateral effects in the market for the distribution of home entertainment content in any EEA Member State. First, the Notifying Party submits that the combined market shares of the Parties are limited, especially considering that the market should not be segmented according to type of distribution (digital or physical) or content (films or other TV content). Second, the Notifying Party considers that several distributors would remain active across the EEA. Third, the Parties face strong competition from local content. Fourth, customers have significant buyer power and can switch easily to other distributors.

5.3.3.2. The Commission's assessment

(a) Physical home entertainment content

(162) The activities of the Parties in the distribution of physical home entertainment content give rise to affected markets in several countries across the EEA, namely:

(a) Physical home entertainment films: in Austria, Belgium, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia Spain, Sweden and the UK.

(b) Physical home entertainment other TV content: in Denmark, Finland, France, Norway, Spain and Sweden.

(163) However, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in any EEA Member State for the reasons set out below.

(164) First, in most Member States the combined position of the Parties will remain modest. Post-Transaction, as shown in Table 5 the merged entity will hold market

[111] "Other TV content" includes non-film, non-sport content, such as TV series, reality shows, game shows and cartoons.

shares based on revenues not exceeding 36% in the distribution of physical home entertainment films in all Member States, with the exception of countries where Fox distributes films also for other producers, namely Denmark, Finland, France, Norway, Spain and Sweden. With regard the distribution of physical home entertainment other TV content, as shown in Table 6 the Parties' position will be less significant and the Transaction will give rise to affected markets only in the countries where Fox distributes other TV content also for other producers, namely Denmark, Finland, France, Norway, Spain and Sweden.

Table 5: 2017 Physical home entertainment – films market shares, revenues (%)[112]

	TWDC	Fox	Fox - third party content [113]	Combined	Warner Bros	Universal	Sony	Others
Austria	[10-20]%	[10-20]%	[0-5]%	**[20-30]%**	[10-20]%	[10-20]%	[5-10]%	[30-40]%
Belgium	[20-30]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Bulgaria	[0-5]%	[10-20]%	[0-5]%	**[10-20]%**	[10-20]%	[10-20]%	[5-10]%	[30-40]%
Croatia	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Cyprus	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Czech Republic	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Denmark	[20-30]%	[10-20]%	[10-20]%	**[50-60]%**	-	[10-20]%	[10-20]%	[20-30]%
Estonia	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Finland	[20-30]%	[10-20]%	[10-20]%	**[50-60]%**	-	[10-20]%	[10-20]%	[20-30]%
France	[20-30]%	[5-10]%	[10-20]%	**[40-50]%**	[20-30]%	[20-30]%	[5-10]%	[0-5]%
Germany	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[20-30]%	[5-10]%	[20-30]%
Greece	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Hungary	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Iceland	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Ireland	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Italy	[20-30]%	-[114]		[20-30]%	[20-30]%	[20-30]%	-	[20-30]%
Latvia	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Liechtenstein	[0-5]%	[10-20]%	[0-5]%	**[10-20]%**	[10-20]%	[10-20]%	[5-10]%	[30-40]%
Lithuania	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Luxembourg	[20-30]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Malta	[0-5]%	[10-20]%	[0-5]%	**[10-20]%**	[10-20]%	[10-20]%	[5-10]%	[30-40]%
Netherlands	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Norway	[20-30]%	[10-20]%	[10-20]%	**[50-60]%**	-	[5-10]%	[5-10]%	[30-40]%
Poland	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[5-10]%	[20-30]%
Portugal	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[0-5]%	[20-30]%

112 The Parties' market shares do not materially differ when considering the narrower market segment for catalogue and new releases. See Notifying Party's response to RFI 15, question 2.

113 As indicated in paragraph 5.3.4.2(a) above, Fox distributes for other producers in several Member States.

114 In Italy, Fox is not active in the distribution of physical home entertainment films. Fox's films are distributed through a licensed model in Italy, through its licensee […]. In any case, Fox's films generate a market share of [10-20]% in the market.

	TWDC	Fox	Fox - third party content [113]	Combined	Warner Bros	Universal	Sony	Others
Romania	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[0-5]%	[20-30]%
Slovakia	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[0-5]%	[20-30]%
Slovenia	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[0-5]%	[20-30]%
Spain	[20-30]%	[10-20]%	[10-20]%	**[50-60]%**	-	-	[20-30]%	[20-30]%
Sweden	[20-30]%	[10-20]%	[10-20]%	**[50-60]%**	-	[10-20]%	[10-20]%	[20-30]%
UK	[10-20]%	[10-20]%	[0-5]%	**[30-40]%**	[10-20]%	[10-20]%	[0-5]%	[20-30]%

Source: Form CO, Annex 9, Chapter 2B(A)

Table 6: 2017 Physical home entertainment – other TV content market shares, revenues (%)[115]

	TWDC	Fox	Fox - third party content	Combined	Others
Denmark	[10-20]%	[5-10]%	[10-20]%	**[30-40]%**	[20-30]%
Finland	[10-20]%	[5-10]%	[10-20]%	**[30-40]%**	[20-30]%
France	[5-10]%	[5-10]%	[0-5]%	**[20-30]%**	[70-80]%
Norway	[20-30]%	[5-10]%	[20-30]%	**[60-70]**	[30-40]%
Spain	[5-10]%	[10-20]%	[30-40]%	**[50-60]%**	[40-50]%
Sweden	[5-10]%	[5-10]%	[10-20]%	**[30-40]%**	[60-70]%

Source: Form CO, Annex 2 ter, Chapter 2B(B)

(165) Second, similarly to the assessment for the distribution of films for theatrical exhibition of paragraph (141), the Commission considers that the Transaction will not raise serious doubts even in the markets where the merged entity will hold more than 40% shares due to Fox's distribution of third party content, films and other TV content.

(166) Third the merged entity will still face significant competitive constraints post-Transaction. A large number of competitors remains in all Member States where the Parties are active, including the distribution arms of other US majors, but also local independent distributors that hold strong positions in their own national markets. For example, across the EEA, Warner Bros has a market share in the distribution of physical home entertainment films of approximately [10-20]%, Universal of [20-30]% and Sony of [5-10]%. Other than the US majors, in each national market, local competitors would continue to exert competitive pressure on the merged entity including Nordisk Film with a market share of approximately [10-20]% in Sweden, Norway, Denmark and Finland. Similarly, in Spain other competitors include Sony with a market share of [20-30]% and other local competitors as Cameo, Savor, Divisa and Karma which together have a market share over 10%.

115 The Parties' market shares do not materially differ when considering the narrower market segment for catalogue and new releases. See Notifying Party's response to RFI 15, question 2.

(167) Fourth, the market investigation has showed that TWDC and Fox are not particularly close competitors in neither the distribution of films nor other TV content for physical home entertainment. Most of the respondents have indicated that Universal and Warner Bros are closer competitors to TWDC than Fox.[116] Most of the respondents further indicated that TWDC and Fox do not exert a particularly important competitive constraint on other market participants in the distribution of physical home entertainment content. In particular, it has been highlighted that a significant number of competitors would remain active in the market.[117] Several respondents also noted that while, after the Transaction, the merged entity will increase its market position, consumer demand and the sale of physical home entertainment content has significantly reduced in the recent years and it is expected to continue declining. [118]

(168) Finally, most of the respondents to the market investigation consider that the Transaction would have either a positive or a neutral impact on the physical home entertainment content markets and their businesses.[119] For example, Colruyt indicated that offer, quality and quantity would stay the same. Hofer noted that the Transaction would have minimal impact on its business. AB Svensk considered that the physical home entertainment market is rapidly declining and the merger will not have any impact on current market conditions.

(169) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the distribution of physical home entertainment content, including both films and other TV content.

(b) Digital home entertainment content

(170) The activities of the Parties in the distribution of digital home entertainment content give rise to affected markets in several countries across the EEA.

(a) Digital home entertainment films in Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and the UK.

(b) Digital home entertainment other TV content in Austria, Germany and the UK.

(171) However, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in any EEA Member State for the reasons set out below.

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[116] Replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, questions 17, 19 and 20.

[117] Replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, question 21.

[118] Replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, question 23.

[119] Replies to Questionnaire Q4 to Physical Home Entertainment Customers of 17 September 2018, questions 26 and 27.

(172) First, in most Member States the combined position of the Parties will remain modest. Post-Transaction, as shown in Table 7 the merged entity will hold market shares based on revenue below [20-30]% in the distribution of digital home entertainment films in all Member States. With regard the distribution of digital home entertainment other TV content, as shown in Table 8 the Parties' position will be even less significant and the Transaction will give rise to affected markets only in Germany, Austria and the UK.

Table 7: 2016 Digital home entertainment – films market shares, revenues (%)[120]

	TWDC	Fox	Combined	Warner Bros	Universal	Sony	Others
Austria	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[0-5]%	[30-40]%
Bulgaria	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Cyprus	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Czech Republic	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Estonia	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Finland	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[0-5]%	[5-10]%	[40-50]%
France	[5-10]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[5-10]%	[50-60]%
Germany	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[5-10]%	[30-40]%
Greece	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Hungary	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Iceland	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Ireland	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[20-30]%
Latvia	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Lithuania	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Malta	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Poland	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Portugal	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Romania	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Slovakia	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
Slovenia	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[30-40]%
UK	[10-20]%	[10-20]%	**[20-30]%**	[10-20]%	[10-20]%	[10-20]%	[20-30]%

Source: Form CO, Annex 10, Chapter 2B(A)

[120] Market shares data for 2017 were not available to the Parties. The Parties' market shares do not materially differ when considering the narrower market segment for catalogue and new releases. See Notifying Party's response to RFI 15, question 2.

Table 8: 2016 Digital home entertainment – other TV content market shares, revenues (%)[121]

	TWDC	Fox	Combined	Others
Austria	[10-20]%	[10-20]%	[30-40]%	[60-70]%
Germany	[10-20]%	[10-20]%	[30-40]%	[60-70]%
UK	[10-20]%	[10-20]%	[20-30]%	[70-80]%

Source: Form CO, Annex 2 ter, Chapter 2B(B)

(173) Second, the merged entity will still face significant competitive constraints post-Transaction. A large number of competitors remain in all Member States where the Parties are active. Across the EEA, Warner Bros has a market share in the distribution of home entertainment films of approximately [10-20]%, Universal of [10-20]% and Sony of [10-20]%.

(174) Third, the market investigation has showed that TWDC and Fox are not particularly close competitors in either the distribution of films or other TV content for digital home entertainment. With regard to films, most of the respondents have indicated that Universal and Warner Bros are closer competitors to TWDC than Fox. With regard to digital home entertainment other TV content, other than Universal and Warner Bros also HBO has been indicated as closer competitor to TWDC and Fox.[122] While most of the respondents further indicated that several alternatives would remain in the market including the other US major distributors.[123]

(175) Finally, most of the respondents to the market investigation have a mixed views on what impact the Transaction would have on the digital home entertainment markets.[124] On the one side, some respondents indicated that the merged entity may have the incentive to withhold its content in favour of Disney OTT services, Disney Life. However, those potential concerns relate to the licensing of audio-visual content for retail audio-visual services and are discussed in Section 5.4.2. On the other side, some respondents noted that alternative providers would remain available.

(176) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the market for the distribution of digital home entertainment content, including both films and other TV content.

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[121] Market shares data for 2017 were not available to the Parties. The Parties' market shares do not materially differ when considering the narrower market segment for catalogue and new releases. See Notifying Party's response to RFI 15, question 2.

[122] Replies to Questionnaire Q4 to Digital Home Entertainment Customers of 17 September 2018, questions 16, 17 and 20.

[123] Replies to Questionnaire Q4 to Digital Home Entertainment Customers of 17 September 2018, question 23.

[124] Replies to Questionnaire Q4 to Digital Home Entertainment Customers of 17 September 2018, question 27.

5.3.4. Production and licensing of TV audio-visual content

(177) Both Parties produce and license TV audio-visual content to third parties throughout the EEA. Whereas the Transaction does not lead to affected markets in the production and licensing of commissioned TV content, affected markets arise with regard to the production and licensing of rights for pre-produced film and other TV content.

5.3.4.1. Notifying Party's views

(178) The Notifying Party submits that the Transaction will not give rise to unilateral effects in the markets for the production and licensing of TV audio-visual content in any EEA Member State. In TWDC's view, post-transaction, it will continue to face competition from a large number of competitors licensing TV content within the EEA which include major US and European distributors. Furthermore, the Notifying Party submits that, with a portfolio mainly consisting of US produced content, it faces competitive constraints from local content producers that are able to adapt to local and regional cultural particularities. According to TWDC, this effect is reinforced by European and national legislation requiring TV retailers to reserve a percentage of their transmission time to local and EU content. The Notifying Party further submits that the Parties' combined market shares are moderate and likely overstate their market position since the performance of licensors depends on the slate of films in a given year. Finally, TWDC submits that in-house production and commissioned content exercise competitive constraints on licensors of pre-produced TV content and that the Parties will face significant buyer power from large and sophisticated broadcasting groups, Pay-TV retailers and OTT operators.

5.3.4.2. The Commission's assessment

(a) Licensing of television rights for films

(179) In the past, the Commission has considered sub-dividing the markets for the licensing of television rights for films by exhibition window and distinguishing between the licensing of television rights of US films and other films in each exhibition window.

(180) While the Parties' combined market share in certain countries and linguistic regions[125] within the sub-segments is higher than their share in an overall market for the licensing of television rights for films, the Commission considers that the Transaction does not raise serious doubts in any EEA Member State for the reasons set out below.

[125] The Notifying Party confirms that combined market shares for linguistic regions would not materially differ from shares provided on a by-country basis. As regards certain territory groups (namely the Baltic countries; Belgium & Luxembourg; Germany & Austria; Greece & Cyprus; the Nordic countries and the UK & Ireland), the Notifying Party submits that it is not able to provide data on a by-country basis for these regions in a reliable manner. However, the Parties submit that they have no reliable data indicating that market shares would materially differ on a national basis from those provided to the Commission (reply to question 11 of RFI 18).

(181) First, in most affected markets for the licensing of television rights for films,[126] the combined position of the Parties will remain at or below [30-40]%. In an overall market for the licensing of TV rights for films, the Parties' combined shares are: [20-30]% in France, [20-30]% in Germany & Austria, [20-30]% in Spain, and [30-40]% in the UK & Ireland. In a potential sub-segment for the licensing of television rights of US films, post-Transaction, as shown in Table 9, the Parties' combined market shares will not exceed 35%.

Table 9: 2016 Licensing of television rights for US films (licensing revenues)[127]

	Belgium & Luxembourg	France	Germany & Austria	Italy	Poland	Spain	UK & Ireland
TWDC	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%
Fox	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%
Combined	**[20-30]%**	**[30-40]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[30-40]%**
Warner Bros	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Sony	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%
Universal	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[20-30]%	[10-20]%
Lionsgate	[5-10]%	[5-10]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%	[0-5]%
Paramount	[0-5]%	[5-10]%	[5-10]%	[10-20]%	[0-5]%	[5-10]%	[5-10]%
Others	[10-20]%	[10-20]%	[5-10]%	[10-20]%	[10-20]%	[10-20]%	[5-10]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: Form CO (Chapter 2B(A))

(182) Second, the Parties will face significant competitive constraints post-Transaction. A significant number of competitors would remain active in all affected markets, including all other major US studios.

(183) Third, the market investigation has shown that TWDC and Fox are not particularly close competitors in the licensing of TV rights for films (or US films). The majority of respondents have indicated Universal and Warner Bros as closer competitors to the Parties.[128]

(184) In the course of the market investigation, respondents raised concerns that, post-Transaction, TWDC might impose licensing terms that would be less favourable

[126] The Parties' combined market shares give rise to the following affected markets: (i) licensing of television rights for (US) films in Belgium/Luxembourg, France, Germany/Austria, Italy, Poland, Spain, and the UK/Ireland; (ii) licensing of TVOD/PPV rights for (US) films in Belgium/Luxembourg, France, Germany/Austria, Greece/Cyprus, Portugal, and the UK/Ireland; (iii) licensing of first pay-TV window rights for (US) films in France, Germany/Austria, Greece/Cyprus, Malta, Poland, Spain, and the UK/Ireland; (iv) licensing of FTA rights for (US) films in the Baltics (Estonia, Latvia, Lithuania), Belgium/Luxembourg, Bulgaria, France, Germany/Austria, Hungary, Italy, the Nordics (Denmark, Finland, Norway, Sweden), Poland, Portugal, Romania, Slovakia, Spain, and the UK/Ireland. Market shares for all affected markets are provided in the Form CO, Chapter 2B(A), Annex 11.

[127] The Notifying Party submits that the underlying methodology for market share estimates based on television licensing revenues relies on information that is only available until 2016 (Form CO, Chapter 2B(a) Distribution of Audio-Visual Content for Home Entertainment and Television – Films).

[128] Replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018 questions 28-29; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 28-29; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 45; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 49-50, 55.

to its customers.[129] However, the Commission considers that, even though the merged entity will hold a broader content portfolio post-Transaction, it will not be able to significantly degrade terms and condition vis-à-vis its customers due to its limited market share and the availability of alternative licensors in the market.

(185) The Parties' combined market shares exceed 35% in the market for licensing of TVOD/PPV rights for US films in Greece & Cyprus ([50-60]%), in the market for the licensing of first pay-TV window rights for films in France ([30-40]%), in the market for the licensing of first pay-TV window rights for US films in France ([40-50]%), Greece & Cyprus ([40-50]%), and Malta ([40-50]%), and in the market for the licensing of FTA window rights for US films in Belgium & Luxembourg ([40-50]%). However, in the Commission's view, these market shares may be overstated for the reasons set out below.

(186) In Belgium & Luxembourg, Greece & Cyprus, and Malta, the shares provided by the Notifying Party for 2016 reflect a distribution agreement between Fox and […] which is no longer in force. The Commission deems it likely that, in the absence of this distribution agreement, Fox' current market share is lower than suggested by the figures for 2016. Furthermore, TWDC's Maltese licensing revenues for 2016 exceptionally also included […], leading to inflated 2016 revenues compared to 2015 and 2017. Finally, the provided market share for France in 2016 is likely to overstate Fox' current position: [Details on Fox's contractual agreements].

(187) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to an overall market for the licensing of television rights for films irrespective of whether separate markets exist for US films and/or for exhibition windows.

(b) Licensing of television rights for other TV content

(188) The activities of the Parties in the licensing of television rights for other TV content give rise to affected markets in Germany & Austria and the UK & Ireland.[130] The Commission nevertheless considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in any EEA Member State for the reasons set out below.

(189) First, in most Member States, the combined position of the Parties will remain modest. Post-Transaction, as shown in Table 10, the Parties' combined market shares will be of [20-30]% in Germany and [30-40]% in the UK & Ireland, while it will be below [20-30]% in all other countries.

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129 Replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 31-32.

130 The Notifying Party confirms that combined market shares for linguistic regions would not materially differ from shares provided on a by-country basis. As regards certain territory groups (namely the Baltic countries; Belgium & Luxembourg; Germany & Austria; Greece & Cyprus; the Nordic countries and the UK & Ireland), the Notifying Party submits that it is not able to provide data on a by-country basis for these regions in a reliable manner. However, the Notifying Party submits that such market shares would not materially differ from those provided to the Commission (reply to question 11 of RFI 18).

Table 10: Licensing of other TV content[131]

	Germany & Austria	UK & Ireland
TWDC	[10-20]%	[10-20]%
Fox	[10-20]%	[20-30]%
AETN	[0-5]%	[0-5]%
Combined	**[20-30]%**	**[30-40]%**
Warner Bros	[10-20]%	[10-20]%
CBS	[10-20]%	[5-10]%
Universal	[5-10]%	[5-10]%
Viacom	[0-5]%	[0-5]%
Sony/MGM	[5-10]%	[0-5]%
BBC	[0-5]%	[5-10]%
Others	[30-40]%	[30-40]%
Total	100.0%	100.0%

Source: Form CO (Chapter 2B(B))

(190) Second, the Parties will still face significant competitive constraints post-Transaction as a significant number of competitors remain in both affected markets, including other major US studios.

(191) Third, the market investigation has shown that TWDC and Fox are not particularly close competitors in the licensing of other TV content. The majority of respondents have indicated Universal and Warner Bros as closer competitors to the Parties.[132]

(192) The Commission notes that other than the absence of domestic competitors focusing on the licensing of non-US films in this narrower segment, the competitive assessment of Section 5.3.4.2 (a) applies *mutatis mutandis*. The Commission considers that the presence of the other US majors such as Warner (which includes HBO channels), Universal, Sony and Paramount would suffice to guarantee that post-Transaction the merged entity faces sufficient competition in the licensing of other TV content.

(193) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to a market for the licensing of other TV content rights and in any narrower product market.

[131] The Notifying Party confirms that the Parties' market shares in the potential sub-segments of the licensing of television rights for scripted and non-scripted other content would not materially differ from their market shares in the overall segment of the licensing of television rights for other TV content (reply to RFI 20).

[132] Replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018 questions 28-29; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 28-29; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 45; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 49-50, 55.

5.3.5. Wholesale supply of TV channels

(194) TWDC and Fox both licence TV channels in the EEA. TWDC also owns, through ABC, a 50% stake in A+E Television Networks, LLC (“A&E”), a joint venture with Hearst Corporation ("Hearst"). A&E operates six channels showing mostly general entertainment and factual content. The Notifying Party argues that A&E operates independently from TWDC; it neither manages the negotiating and/or licensing of A&E’s factual channels, nor controls A&E’s distribution and/or pricing decisions.

(195) The activities of the Parties overlap exclusively in the wholesale supply of basic pay-TV channels. In particular, the Transaction gives rise to horizontally affected markets in the wholesale supply of basic pay-TV channels (and possible segments thereof) in several Member States namely, (i) the wholesale markets for the supply of basic pay-TV channels in Germany, Italy, Portugal and Spain; (ii) the wholesale market for the supply of general entertainment basic pay-TV channels in Italy, Portugal and Spain; (iii) the wholesale market for the supply of children basic pay-TV channels in Belgium, Bulgaria, France, Germany, Ireland, Italy, the Netherlands, Norway, Poland, Portugal, Romania, Spain and the UK; and (iv) the wholesale market for the supply of factual basic pay-TV channels in Belgium, Germany, Ireland, Italy, the Netherlands, Norway, Spain and the UK.

5.3.5.1. Notifying Party's views

(196) The Notifying Party submits that the Transaction will not give rise to unilateral effects in either the market for the wholesale supply of TV channels or any narrower product market(s) in any EEA Member State. First, the audience shares held by the Parties in the wholesale market for the supply of pay-TV channels and its various segments vastly overstate the Parties' actual market position since even large audience shares are in no way indicative of market power given that FTA channels exert a strong competitive pressure on pay-TV channels across the EEA. Second, in relation to the wholesale supply of children basic pay-TV channels, the increment brought by the Transaction is minimal. Third, in relation to the wholesale supply of factual basic pay-TV channels, the increment brought by the Transaction relates to A&E channels, whose day-to-day activities TWDC has no control over. Fourth, in each of the technically affected markets, strong third-party rivals will remain post-Transaction. Fifth, given the ongoing shift towards non-linear consumption of TV content, share of supply data for the wholesale supply of TV channels (generally and on narrower market segmentations) substantially understate the competitive constraints on wholesale TV channel suppliers.

5.3.5.2. The Commission's assessment

(a) Wholesale supply of basic pay-TV channels

(197) The activities of the Parties in the wholesale supply of basic pay-TV channels give rise to affected markets in four Member States, namely: in Germany, Italy, Spain and Portugal (see Table 11).

(198) While several respondents to the market investigation indicated that the Transaction would have a negative impact on the markets for the wholesale supply of pay-TV channels,[133] the Commission nevertheless considers that the Transaction does not raise serious doubts as to its compatibility with the internal market in any EEA Member State for the reasons set out below.

Table 11: Horizontally affected markets – wholesale supply of basic pay-TV channels in 2017 (by audience)

Country	TWDC		Fox	Total
	TWDC	A&E		
Germany	[5-10]%	[0-5]%	[10-20]%	**[20-30]%**
Italy	[5-10]%	[5-10]%	[30-40]%	**[40-50]%**
Portugal	[5-10]%	[0-5]%	[10-20]%	**[20-30]%**
Spain	[0-5]%	[5-10]%	[10-20]%	**[20-30]%**

Source: Form CO, Chapter 2C

(199) First, post-Transaction, the merged entity will hold market shares by audience below [20-30]% in Germany, Portugal and Spain, and [40-50]% in Italy. Moreover, the increment brought by the Transaction would be [10-20]% or less in all the above mentioned countries. In addition, as a result of the commitments offered by TWDC, the merged entity's market share would be even lower and the merger specific market share increment resulting from the Transaction would only be [5-10]% in Germany and Italy, [5-10]% in Portugal and [0-5]% in Spain (the market share increment resulting from A&E would disappear).

(200) Second, most of the respondents to the market investigation considered that the Parties are not particularly close competitors and their channels are mainly complementary with the possible exception of their factual channels, as discussed in more detail in Section 5.3.5.2 (d).[134]

(201) Third, several alternative providers of basic pay-TV channels will remain available post-Transaction. In Germany, alternative suppliers include Universal (audience share in 2017 of [10-20]% in pay-TV and [20-30]% in basic pay-TV) and Time Warner ([10-20]% in pay-TV and [10-20]% in basic pay-TV). In Italy, Sky has an audience share in 2017 of [20-30]% in basic pay-TV. In Spain, several competitors including AMC and Viacom with respectively [10-20]% and [5-10]% audience shares in basic pay-TV will remain available.

(202) Finally, while several respondents to the market investigation indicated that the Transaction would have a negative impact on the markets for the wholesale

[133] See replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 38; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 47; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 46; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 56.

[134] See replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 40; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 39.

supply of basic pay-TV channel, their response are mainly focussed on the impact that the Transaction would have in the wholesale supply of factual channels, discussed at Section 5.3.5.2 (d), and on the increase in the merged entity bargaining position, discussed at Section 5.3.5.2.(a).[135] In relation to the latter, the Commission notes that audience share shows that the combined position of the merged entity will remain modest and below [20-30]% in most EEA counties and give rise to affected markets only in four Member States where alternative providers would remain active.

(203) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the markets for the wholesale supply of basic pay-TV channels.

(b) Wholesale supply of general entertainment basic pay-TV channels

(204) The activities of the Parties in the wholesale supply of general entertainment basic pay-TV channels give rise to affected markets in Italy, Portugal and Spain.

(205) However, the Commission considers that in this market the Transaction does not raise serious doubts as to its compatibility with the internal market in any EEA Member State for the reasons set out below.

Table 12: Horizontally affected markets – wholesale supply of General Entertainment basic Pay-TV channels in 2017 (by audience)

Country	TWDC		Fox	Total
	TWDC	A&E		
Italy	-	[0-5]%	[50-60]%	**[50-60]%**
Portugal	-	[0-5]%	[20-30]%	**[20-30]%**
Spain	-	[0-5]%	[20-30]%	**[20-30]%**

Source: Form CO, Chapter 2C

(206) First, in most Member States the combined position of the merged entity will remain modest and below [20-30]%. Post-Transaction, the merged entity will hold market shares by audience below [30-40]% in Portugal and Spain. Moreover, the increment brought by the Transaction would be of approximately [0-5]% in Spain and Italy and only [0-5]% in Italy.

(207) Second, several alternative providers of general entertainment channels would remain available in those countries. In Spain, alternative providers will include Sony (audience share of [10-20]%) and Time Warner ([10-20]%). In Portugal, alternative providers will include Sony ([10-20]%) and TV Globo ([10-20]%). In Italy, the main alternative provider by audience share will be Sky ([30-40]%).

[135] See replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 38; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 47; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 46; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 56.

(208) Third, most of the respondents to the market investigation confirmed that the Parties are not particularly close competitors.[136]

(209) Finally, while several respondents to the market investigation indicated that the Transaction would have a negative impact on the markets for the wholesale supply of basic pay-TV channel, their response are mainly focussed on the impact that the Transaction would have in the wholesale supply of factual basic pay-TV channels, discussed at Section 5.3.5.2 (d), and on the increase in the merged entity bargaining position in the overall market for the wholesale supply of basic-pay TV channels, discussed at Section 5.3.5.2.(a).[137]

(210) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to the markets for wholesale supply of general entertainment basic pay-TV channels.

(c) Wholesale supply of children basic pay-TV channels

(211) The activities of the Parties in the wholesale supply of children basic pay-TV channels give rise to affected markets in several countries across the EEA, namely: Belgium, Bulgaria, France, Germany, Ireland, Italy, Netherlands, Norway, Poland, Portugal, Romania, Spain and the UK.[138]

(212) However, the Commission considers that in this market the Transaction does not raise serious doubts as to its compatibility with the internal market in any EEA Member State for the reasons set out below.

Table 13: Horizontally affected markets – wholesale supply of Children basic Pay-TV channels in 2017 (by audience)

Country	TWDC		Fox	Total
	TWDC	A&E		
Belgium	[30-40]%	-	[0-5]%	**[30-40]%**
Bulgaria	[20-30]%	-	[0-5]%	**[20-30]%**
France	[30-40]%	-	[0-5]%	**[30-40]%**
Germany	[50-60]%	-	[0-5]%	**[50-60]%**

[136] See replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 24; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 22, 24; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 35; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 33.

[137] See replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 38; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 47; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 46; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 56.

[138] For the sake of completeness, the Commission notes that TWDC also supply FTA children channels in certain Member States (for example, Disney Channel and Super RTL in Germany). However, Fox is not active in the FTA market and, therefore, the Transaction does not give rise to any affected market.

Country	TWDC		Fox	Total
	TWDC	A&E		
Ireland	[30-40]%	-	[0-5]%	**[30-40]%**
Italy	[30-40]%	-	[0-5]%	**[30-40]%**
Netherlands	[20-30]%	-	[0-5]%	**[20-30]%**
Norway	[40-50]%	-	[0-5]%	**[40-50]%**
Poland	[20-30]%	-	[0-5]%	**[20-30]%**
Portugal	[40-50]%	-	[0-5]%	**[40-50]%**
Romania	[30-40]%	-	[0-5]%	**[30-40]%**
Spain	[30-40]%	-	[10-20]%	**[40-50]%**
UK	[30-40]%	-	[0-5]%	**[30-40]%**

Source: Form CO, Chapter 2C

(213) First, as shown in Table 13, while the merged entity would have a significant market position in several Member States, the Transaction would only bring a limited increment (less than 5% market shares) to TWDC's activities in all affected markets with the exception of Spain ([10-20]%).

(214) Second, several alternative wholesale providers of basic pay-TV channels would remain available in all the countries. Turner operates the Boomerang and Cartoon Network channels. Viacom supplies the Nickelodeon channel which is particularly focused on children between 2-11 years old. In Spain in particular, alternative providers such as Viacom and AMC would remain available with market shares by audience of respectively [50-60]% and [10-20]% in 2017 in the narrower product market for children basic pay-TV channels. In particular, Viacom would remain the market leader with market shares increasing from [30-40]% in 2015 to [40-50]% in 2017. In the same years, TWDC's audience shares in Spain have declined from [40-50]% in 2015 to [30-40]% in 2017, showing that Viacom is able to exert a competitive constraint on TWDC in the country.

(215) Third, most of the respondents to the market investigation confirmed that the Parties are not particularly close competitors. In particular, respondents highlighted how Viacom and Turner are closer competitors to TWDC than Fox is. Some respondents noted that Baby TV, the children channel supplied by Fox, has a different target audience than TWDC's Disney channels and Viacom's Nickelodeon channels.[139] In this regard, most of the respondents further noted that the Transaction would not strengthen TWDC's position in the supply of children channels in the EEA. In particular, while some respondents indicated that

[139] See replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, questions 22, 24; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 23; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 33; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 46.

TWDC's bargaining position will be improved, this was mainly described as resulting from the indirect impact of leveraging channels of different genres supplied by Fox and it relates to the overall market for the wholesale supply of pay-TV channels, discussed in Section 5.3.5.2 (a) above. [140]

(216) Finally, while several respondents to the market investigation indicated that the Transaction would have a negative impact on the markets for the wholesale supply of basic pay-TV channel, their response are mainly focussed on the impact that the Transaction would have in the wholesale supply of factual channels, discussed at Section 5.3.5.2 (d), and on the increase in the merged entity bargaining position, discussed at Section 5.3.5.2.(a).[141]

(217) In light of the above, the Commission concludes that the Transaction does not raise serious doubts as to its compatibility with the internal market in relation to either the markets for wholesale supply of pay-TV basic children channels.

(d) Wholesale supply of factual basic pay-TV channels

(218) The activities of the Parties in the wholesale supply of children TV channels give rise to affected markets in several countries across the EEA, namely: Belgium, Germany, Ireland, Italy, the Netherlands, Norway, Spain and the UK.

Table 14: Horizontally affected markets – wholesale supply of Factual basic pay-TV channels in 2017 (by audience)

Country	TWDC		Fox	Total
	TWDC	A&E		
Belgium	-	[0-5]%	[30-40]%	[30-40]%
Germany	-	[20-30]%	[40-50]%	**[70-80]%**
Ireland	-	[10-20]%	[5-10]%	**[20-30]%**
Italy	-	[20-30]%	[20-30]%	**[40-50]%**
Netherlands	-	[5-10]%	[20-30]%	**[30-40]%**
Norway	-	[5-10]%	[10-20]%	**[20-30]%**
Spain	-	[20-30]%	[30-40]%	**[50-60]%**
UK	-	[10-20]%	[10-20]%	**[20-30]%**

Source: Form CO, Chapter 2C

[140] See replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 42; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 42.

[141] See replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 38; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 47; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 46; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 56.

(219) The Commission considers that in this market the Transaction raises serious doubts as to its compatibility with the internal market in Belgium, Germany, Ireland, Italy, the Netherlands, Norway, Spain and the UK for the reasons set out below.

(220) First, as shown in Table 14, through the combination of Fox's and TWDC's (A&E) activities the merged entity will hold a significant market position in the market for the wholesale supply of factual basic pay-TV channels across the EEA. The Parties would hold particularly strong positions in Germany, Italy and Spain. While the combined market shares of the Parties in Norway, the UK and Ireland is not particularly high, the Transaction will combine the second and third largest providers of factual basic pay-TV channels in those counties. Moreover, Discovery would be the only main operator to remain active in the market with market shares of respectively [70-80]%, [50-60]% and [50-60]% by audience in Norway, the UK and Ireland.

(221) Second, the market investigation has indicated that the Parties are close competitors in this market.[142] In particular, most of the respondents indicated Fox's National Geographic[143] channels as the first or second closest competitor to TWDC's A&E factual channels[144] with Discovery as the only main competing provider of factual basic pay-TV channels that would remain available in the EEA.

(222) Third, in relation to the Notifying Party's argument that the Transaction would not have any impact on the wholesale market for the supply of factual basic pay-TV channels due to the absence of control by TWDC on A&E's day-to-day activities, the Commission notes that TWDC has the ability of veto over significant aspect of A&E activities which may limit its ability to compete across the EEA with Fox's National Geographic channels.[145]

(223) Fourth, most of the respondents to the market investigation indicated that the Transaction would have a negative impact on the markets for the wholesale supply of basic pay-TV channels.[146] In particular, most of the respondents indicated that the Transaction would significantly strengthen TWDC's position in the supply of factual channels in the EEA. [147]

(224) In light of the above, the Commission concludes that the Transaction raises serious doubts as to its compatibility with the internal market in relation to the

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142 See replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 23; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, questions 23, 24; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 34; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 33.

143 Fox's factual channels include National Geographic, National Geographic People, National Geographic Wild.

144 A&E channels include History, A&E, H2, Blaze, Crime + Investigation, and Lifetime channels.

145 For example, TWDC has veto rights on: […]).

146 See replies to Questionnaire Q7 to TV Channel Suppliers of 17 September 2018, question 38; replies to Questionnaire Q9 to TV Channel Suppliers of 17 September 2018, question 47; replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 46; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, question 56.

147 See replies to Questionnaire Q8 to TV Retail Distributors of 17 September 2018, question 41; replies to Questionnaire Q10 to TV Retail Distributors of 17 September 2018, questions 45.

markets for wholesale supply of factual basic pay-TV channels in Belgium, Germany, Ireland, Italy, Netherlands, Norway, Spain and the UK.

5.4. Vertically affected markets

5.4.1. Production and licensing of rights (upstream) and distribution of films for theatrical release (downstream)

(225) The Parties' presence in both the production and licensing of rights (upstream) and the distribution to exhibitors (downstream) of films for theatrical release gives rise to vertically affected markets in a number of Member States. Considering the broader markets for the production and licensing of rights of all films and theatrical distribution of all films, affected markets arise in Belgium & Luxembourg, Germany, Spain, Sweden and UK & Ireland. On the narrower markets for the production and licensing of rights and theatrical distribution of US films, affected market arise in Austria, Denmark, Belgium & Luxembourg, Finland, France, Germany, Italy, Norway, Spain, Sweden, UK & Ireland.

5.4.1.1. Notifying Party's views

(226) The Notifying Party submits that the Transaction will provide TWDC with neither the ability nor the incentive to engage in either input foreclosure or customer foreclosure. Concerning input foreclosure, the Notifying Party argues that TWDC will not be able to engage in input foreclosure in view of the Parties' relatively modest combined market share in the upstream market for the production and licensing of rights of films and the fact that Fox's films are not a critical input for distributors. Concerning customer foreclosure, the Notifying Party submits that it will not be able to foreclose other producers' films […], but also because of the many alternative routes to market including other producers' distribution arms and independent distributors that would be available to them.

5.4.1.2. The Commission's assessment

(a) Input foreclosure

(227) In terms of input foreclosure, the Commission has assessed whether, in Member States where one of the Parties is vertically integrated into distribution, whereas the other party supplies its films to third party distributors, the merged entity could foreclose third party distributors downstream by fully internalising the distribution process.[148]

(228) Input foreclosure concerns could arise in Member States where TWDC is vertically integrated into distribution whereas Fox supplies its films to third party distributors. These are Denmark, Finland, Norway, the Netherlands and Poland. There are no Member States where Fox is vertically integrated but TWDC is not. Affected markets only arise in Denmark, Finland and Norway in the narrower segment of distribution of US films. [149] The Commission nevertheless considers

[148] In countries where both Parties are vertically integrated into distribution no vertical links arise between production and distribution and these markets are assessed horizontally in Section 5.3.2.

[149] The combined market shares of the Parties on the upstream market for the production and licensing of rights of all films and TWDC's market share on the downstream market for theatrical distribution of all

that the Transaction does not raise serious doubts as to its compatibility with the internal market in any Member State for the reasons set out below.

(229) Table 15: 2017 Production and licensing of US films market shares, based on gross box office revenues (%)

	Denmark	Finland	Norway
TWDC	[20-30]%	[20-30]%	[20-30]%
Fox	[5-10]%	[5-10]%	[5-10]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**
Universal	[10-20]%	[10-20]%	[10-20]%
Warner Bros.	[10-20]%	[10-20]%	[10-20]%
Others	[30-40]%	[30-40]%	[20-30]%
Total	100.0%	100.0%	100.0%

Source: ComScore and IMDb Form CO (Chapter 1A)

Table 16: 2017 Theatrical distribution of US films market shares, based on gross box office revenues (%)

	Denmark	Finland	Norway
TWDC	[20-30]%	[40-50]%	[20-30]%
UIP	[30-40]%	-	[30-40]%
Warner Bros.	-	-	-
Others	[30-40]%	[50-60]%	[40-50]%
Total	100.0%	100.0%	100.0%

Source: ComScore and IMDb Form CO (Chapter 2A)

(230) Post-Transaction, the merged entity's market power in the upstream market for the production and licensing of rights of US films will remain modest preventing TWDC from carrying out an input foreclosure strategy, as shown in Table 15 and Table 16. Even if post-Transaction Fox's films were to be distributed alongside TWDC's in Denmark, Finland, and Norway, Fox's current distributors in those countries would still have access to a large number of alternative US films for distribution.

(231) During the market investigation, the vast majority of respondents confirmed that there are sufficient alternative providers of films available to distributors.[150] It is also noteworthy that in all Member States, where vertically affected markets arise due to the link between the production and licensing of rights and distribution of films for theatrical release, the distributors of Fox's films, that are the potential victims of an input foreclosure strategy, also distribute the films of at least two more US majors. In Denmark, Finland and Norway, Fox films are distributed by two third party distributors, Nordisk and Svensk Filmindustri. Both of these distributors also distribute films produced by Warner Bros, Universal, Paramount and Sony in all three countries. Therefore, based on the merged entity's modest

films in Denmark, Finland, the Netherlands, Norway and Poland remain below [30-40]%, therefore no vertically affected markets arise.

150 Replies to Questionnaire Q2 to distributors, of 17 September 2018, question 41.

market power and the availability of alternative suppliers, the Commission considers that, post-Transaction, TWDC will not have the ability to foreclose third party distributors from access to US films for theatrical release.

(232) During the market investigation only one respondent raised the concern that post-Transaction distributors might be foreclosed from access to films. However, it did not concern any of the Member States where affected markets arise. The same respondent also considered that post-Transaction enough alternative providers of films for theatrical distribution will remain in the market.[151]

(233) Some distributors of Fox's films voiced specific concerns in Member States where none of the Parties are vertically integrated, especially in Bulgaria and Portugal. According to these respondents, the Transaction may cause increased concentration on the distribution market by consolidating the distribution of TWDC and Fox's films through TWDC's current distributors.[152] However, for the reasons explained in paragraph (125), the Commission considers that these concerns are unfounded and in any event do not relate to a merger-specific change of the structure of the market.

(234) In view of the above, the Commission considers that the Transaction would not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationship between the market for the production and supply of films for theatrical release and the market for the distribution of films for theatrical release.

(b) Customer foreclosure

(235) In terms of customer foreclosure, vertical links arise in Member States where the Parties are vertically integrated into distribution and besides their own films offer distribution services to competing production studios as well. The question is whether post-Transaction the merged entity would have the ability and incentive to cease distributing the films of competing studios actively foreclosing them from access to exhibitors. Since the competitive dynamics are the same on the markets for production and distribution of all films and production and distribution of US films, the assessment is applicable to both and they will thus be analysed together.

(236) TWDC carries out the distribution of films of other studios in Finland and Germany. Fox does so in all EEA Member States where it is active in distribution.

(237) Considering the markets for the production and licensing of rights (upstream) and theatrical distribution (downstream) of all films, the Parties' activities give rise to vertically affected markets in Belgium & Luxembourg, Germany, Spain, Sweden and UK & Ireland.

[151] Replies to Questionnaire Q2 to distributors, of 17 September 2018, question 41.
[152] Replies to Questionnaire Q2 to distributors, of 17 September 2018, questions 43 and 47.

Table 17: 2017 Production and licensing of rights of all films market shares, based on gross box office revenues (%)

	Belgium & Luxembourg	Germany	Spain	Sweden	UK & Ireland
TWDC	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%
Fox	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%
Combined	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**	**[20-30]%**
Universal	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Warner Bros	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Others	[50-60]%	[50-60]%	[50-60]%	[40-50]%	[30-40]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Source: ComScore and IMDb Form CO (Chapter 1A)

Table 18: 2017 Theatrical distribution of all films market shares, based on gross box office revenues (%)

	Belgium & Luxembourg	Germany	Spain	Sweden	UK & Ireland
TWDC	[10-20]%	[20-30]%	[10-20]%	[20-30]%	[10-20]%
Fox	[20-30]%	[5-10]%	[10-20]%	[30-40]%	[10-20]%
Combined	**[40-50]%**	**[30-40]%**	**[30-40]%**	**[50-60]%**	**[30-40]%**
Others	[50-60]%	[70-80]%	[60-70]%	[40-50]%	[60-70]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

Source: ComScore and IMDb Form CO (Chapter 2A)

(238) On the narrower markets for the production and theatrical distribution of US films, the activities of the Parties give rise to affected markets in Austria, Denmark, Belgium & Luxembourg, Finland, France, Germany, Italy, Norway, Poland, Spain, Sweden, UK & Ireland. However, none of the Parties distributes films for other studios in Denmark, Norway or Poland therefore no customer foreclosure can take place in those Member States.

Table 19: 2017 Production and licensing of rights of US films market shares, based on gross box office revenues (%)

	Austria	Belgium & Lux.	Finland	France	Germany	Italy	Spain	Sweden	UK & Ireland
TWDC	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%
Fox	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[5-10]%	[10-20]%	[5-10]%	[10-20]%
Combined	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[20-30]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**
Universal	[10-20]%	[10-20]%	[10-20]%	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Warner Bros	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%
Sony	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%
Others	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[20-30]%	[10-20]%	[10-20]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: ComScore and IMDb Form CO (Chapter 1A)

Table 20: 2017 Theatrical distribution of US films market shares, based on gross box office revenues (%)

	Austria	Belgium & Lux.	Finland	France	Germany	Italy	Spain	Sweden	UK & Ireland
TWDC	[20-30]%	[20-30]%	**[40-50]%**	[20-30]%	[20-30]%	[10-20]%	[20-30]%	[20-30]%	[20-30]%
Fox	[10-20]%	[20-30]%	[0-5]%	[10-20]%	[10-20]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%
Combined	**[30-40]%**	**[50-60]%**	**[40-50]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[30-40]%**	**[60-70]%**	**[30-40]%**
Universal	[10-20]%	-	-	[20-30]%	[20-30]%	[20-30]%	[20-30]%	-	[10-20]%
Warner Bros	[10-20]%	-	-	[10-20]%	[10-20]%	[20-30]%	[10-20]%	-	[10-20]%
Sony	[10-20]%	[30-40]%	-	[10-20]%	[10-20]%	-	[10-20]%	-	[10-20]%
Others	[20-30]%	[10-20]%	-	[20-30]%	[10-20]%	[10-20]%	[10-20]%	[30-40]%	[10-20]%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

Source: ComScore and IMDb Form CO (Chapter 2A)

(239) The Commission considers that TWDC will not have the ability to engage in customer foreclosure on either the broader markets for the production and licensing (upstream) and theatrical distribution (downstream) encompassing all films or the narrower market concerning only US films in any Member State for the reasons set out below.

(240) As explained above (see Section 4.2), the use of third party distributors is one of the two main distribution channels employed by producers of films, the other being to distribute their films directly to exhibitors. Most of the studios TWDC and Fox distribute for are large sophisticated actors, such as Sony (TWDC distributes in Finland), Warner Bros (Fox distributes in Belgium & Luxembourg and Sweden), and Pathé (Fox distributes in the UK), among others, which could easily start carrying out the distribution of their own films in the event that the merged entity would cease distributing the films of other producers or find alternative distributors. […].

(241) Not only do competing studios have the option to distribute their films directly to exhibitors but they may also turn to a number of credible third party distributors in all vertically affected markets. The merged entity will thus not have the ability to foreclose competing studios from access to exhibitors post-Transaction.

(242) In the event the merged entity was to engage in customer foreclosure it would forego the profits stemming from distributing third party films without effectively excluding competing studio's access to customers. It is therefore highly questionable that the merged entity would have the incentive to pursue such a strategy.

(243) No concerns have been raised from customers of the Parties in this respect during the market investigation.[153]

(244) In view of the above, the Commission considers that the Transaction would not raise serious doubts as to its compatibility with the internal market in relation to potential customer foreclosure with respect to the vertical relationship between the market for the production and supply of films for theatrical release and the market for the distribution of films for theatrical release, both in the case of all films as well as for US films.

5.4.2. Licensing of TV content and wholesale supply of basic pay-TV channels and retail supply of TV services

(245) The Transaction gives rise to vertical relationships with regard to the Parties' activities in the upstream market for the production and licensing of TV audio-visual content and their downstream activities in (i) the wholesale supply of TV channels, and in (ii) the retail supply of TV services. TWDC and Fox also acquire audio-visual content for incorporation into their own TV channels and retail TV services. More specifically, vertically affected markets arise due to the Parties' upstream activities in the in licensing of television rights for films[154] and pre-produced other TV content ([30-40]% in the UK and Ireland), and TWDC's extremely limited downstream activity as a retail provider of SVOD (DisneyLife).

5.4.2.1. Notifying Party's views

(246) The Notifying Party submits that the Transaction will provide TWDC with neither the ability nor the incentive to engage in either input foreclosure or customer foreclosure. Concerning input foreclosure, the Notifying Party argues that TWDC will not be able to engage in such conduct in view of the Parties' relatively modest combined market share in the upstream market for the production of films and the fact that Fox's films are not a critical input for distributors. Concerning customer foreclosure, the Notifying Party submits that it will not be able to foreclose other producers' films due to the contractual obligations of the Parties with those producers, but also because of the many alternative routes to the market available to competitors including other producers' of films would be available to them.

5.4.2.2. The Commission's assessment

(a) Input foreclosure

(247) In terms of input foreclosure the Commission assesses whether post-Transaction the merged entity would have the ability and incentive to foreclose downstream competitors in the markets of (i) wholesale supply of TV channels and (ii) retail supply of TV services from access to (US) films.

153 Replies to Questionnaire Q1 to studios, of 17 September 2018, question 87.

154 The Parties hold a combined market shares over [30-40]% in the markets for: (i) licensing of television rights for films in France and the UK/Ireland; (ii) licensing of TVOD/PPV rights for films (Greece/Cyprus); (iii) licensing of first pay-TV window rights for films in France, Greece/Cyprus, Malta and Spain; (iv) licensing of FTA rights for films in Baltics (Estonia, Latvia, Lithuania), Belgium & Luxembourg, Bulgaria, Slovakia and the UK & Ireland..

(248) During the market investigation respondents have indicated that, post-Transaction, the merged entity may (i) enjoy increased bargaining power and therefore degrade terms and conditions to which it makes its content available, and/or (ii) offer exclusively its TV content through its upcoming OTT subscription service, Disney Play.

(249) However, the Commission considers that the Transaction would not result in the foreclosure of third party wholesale channel suppliers and TV retailers and is unlikely to have an overall negative impact on effective competition.

(250) First, the merged entity would not have the ability to foreclose access to films to its customers. With regards to the licensing of (US) films rights, as indicated in Section 5.3.4.2.(a), the Parties hold a combined market shares over [30-40]% in the following plausible markets: (i) licensing of television rights for (US) films in France and the UK/Ireland; (ii) licensing of TVOD/PPV rights for (US) films (Greece/Cyprus); (iii) licensing of first pay-TV window rights for (US) films in France, Greece/Cyprus, Malta and Spain; (iv) licensing of FTA rights for (US) films in Baltics (Estonia, Latvia, Lithuania), Belgium & Luxembourg, Bulgaria, Slovakia and the UK & Ireland. For the reasons set out in Section 5.3.4.2.(a), the Commission considers that the merged entity would not hold significant market power under any narrower product and geographic market definition. Moreover, it will not be able to significantly degrade terms and conditions vis-à-vis its customers due to the availability of several alternatives in the upstream markets. The Parties will still face significant competitive constraints post-Transaction. A significant number of competitors remain in all affected markets, including other major US studios. With regards to the licensing of other TV content, the Commission notes that the Parties hold a combined market share over [30-40]% exclusively in the UK and Ireland (see Section 5.3.4.2.(b)). The Commission considers that the presence of the other US majors such as Warner Bros (which includes HBO channels), Universal, Sony and Paramount suffices to guarantee that post-Transaction, wholesale suppliers of TV channels will be able to source other TV content from credible alternatives to the merged entity.

(251) With respect to the potential foreclosure strategy in relation to competing providers of TV channels across the EEA, the Commission considers that, as shown in Section 5.3.5, the merged entity is mainly active in the wholesale supply of channels of specific genres such as factual and children and it would therefore not likely have the incentive to stop offering its films to third parties in order to use them on genre channels which target specific and distinct audiences.

(252) With respect to the potential foreclosure strategy in relation to competing providers of TV retail services across the EEA, the Commission considers that, since the merged entity has no meaningful presence in the retail provision of audio-visual services across the EEA[155], even if the merged entity would implement such conduct, it is unlikely to significantly affect other retail provider of TV services with high market shares in countries where they operate in the next three years.

[155] The market position of the merged entity would not be materially different in the narrower plausible market for the provision of retail OTT audio-visual services. In this market, the main market players would be Netflix and Amazon.

(253) In view of the above, the Commission considers that the Transaction would not raise serious doubts as to its compatibility with the internal market in relation to potential input foreclosure with respect to the vertical relationship between the upstream market for the production and licensing of TV content in general, and films in particular, and the downstream markets for the wholesale supply of pay-TV channels and retail provision of TV services.

(b) Customer foreclosure

(254) In terms of customer foreclosure the Commission needs to assess whether post-Transaction the merged entity would have the ability and incentive to foreclose upstream competitors in the market for the production and licensing of TV audio-visual content from access to the market by no longer acquiring such content as an input to its activities in the downstream markets of (i) wholesale supply of basic pay-TV channels and (ii) retail supply of TV services.

(255) With respect to the merged entity's ability to foreclose competitors from access to the market of wholesale supply of basic pay-TV channels, the Commission notes that, as discussed in Section 5.3.5, the merged entity would not hold significant market power under any product and geographic market definition other than the market for the wholesale supply of factual pay-TV channels in a number of Member States. With respect to the vertical link between the Parties' activities in producing films, the question of customer foreclosure concerns upstream competitors in the production of films and the Parties' acquisition of such content in their downstream activities. Therefore, any market power held by the Parties in the market for the wholesale supply of factual pay-TV channels is irrelevant in the assessment. With respect to the vertical link between the Parties' activities in supply of other TV content, and in particular factual content which could be relevant to competing providers of factual basic pay-TV channels, the Commission notes that pre-Transaction, […][156]. […]. Moreover, no respondents to the market investigation raised concerns related to the potential foreclosure of third party providers of factual content. In any event, any merger specific increase in the Parties' position in the market for the wholesale of factual basic pay-TV channels is removed by the commitments (see Section 6 below).

(256) With respect to the merged entity's ability to foreclose competitors from access to the market of retail supply of TV services, and more specifically TWDC's SVOD service DisneyLife, the Commission considers that the merged entity will not hold significant market power in the downstream market for the retail supply of TV services. TWDC has a market share of less than [0-5]% across the EEA through the supply of ESPN Player. As a result, and given numerous competitors will remain on the market, TWDC will not be able to foreclose competitors from access to the market of retail supply of TV services.

(257) In view of the above, the Commission considers that the Transaction would not raise serious doubts as to its compatibility with the internal market in relation to potential customer foreclosure with respect to the vertical relationship between the upstream market for the production and licensing of TV content in general,

156 […].

and films in particular, and the downstream markets for the wholesale supply of pay-TV channels and retail provision of TV services.

6. COMMITMENTS

6.1. Introduction

(258) In order to remove the serious doubts arising from the Transaction described in Section 5.3.5.2 (d) in relation to the market for the wholesale supply of factual Pay-TV channels in Belgium, Germany, Ireland, Italy, the Netherlands, Norway, Spain and the UK, the Notifying Party submitted commitments pursuant to Article 6(2) of the Merger Regulation on 12 October 2018 (the "Initial Commitments").

(259) The Commission launched a market test of the Initial Commitments on 16 October 2018. Following the feedback received from the Commission, the Notifying Party submitted a final set of commitments on 24 October 2018 (the "Final Commitments").

(260) The Final Commitments are annexed to this decision and form an integral part thereof.

6.2. Analytical framework

(261) Where the Commission considers that a concentration will raise competition concerns the parties may seek to modify the concentration in order to resolve such competition concerns and thereby gain clearance of their merger.[157]

(262) In Phase I, commitments offered by the parties can only be accepted where the competition problem is readily identifiable and can easily be remedied. The competition problem therefore needs to be so straightforward and the remedies so clear-cut that it is not necessary to enter into an in-depth investigation. The commitments must be sufficient to clearly rule out "serious doubts" within the meaning of Article 6(1)(c) of the Merger Regulation. Where the assessment confirms that the proposed commitments remove the grounds for serious doubts on this basis, the Commission clears the merger in Phase I.[158]

(263) In assessing whether the proposed commitments will likely eliminate the competition concerns identified, the Commission considers all relevant factors including inter alia the type, scale and scope of the proposed commitments, judged by reference to the structure and particular characteristics of the market in which the competition concerns arise, including the position of the parties and other participants on the market.[159]

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157 Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "Remedies Notice"), OJ 2008/C 267/01, Paragraph 5.

158 Remedies Notice, Paragraph 81.

159 Remedies Notice, Paragraph 12.

(264) In order for the commitments to comply with these principles, commitments must be capable of being implemented effectively within a short period of time.[160] Where, however, the parties submit remedies proposals that are so extensive and complex that it is not possible for the Commission to determine with the requisite degree of certainty, at the time of its decision, that they will be fully implemented and that they are likely to maintain effective competition in the market, an authorisation decision cannot be granted.[161]

(265) As concerns the form of acceptable commitments, the Merger Regulation leaves discretion to the Commission as long as the commitments meet the requisite standard.[162] Structural commitments will meet the conditions set out above only in so far as the Commission is able to conclude with the requisite degree of certainty that it will be possible to implement them and that it will be likely that the new commercial structures resulting from them will be sufficiently workable and lasting to ensure that the significant impediment to effective competition will not materialise.[163]

(266) Divestiture commitments are generally the best way to eliminate competition concerns resulting from horizontal overlaps, although other structural commitments, such as access remedies, may be suitable to resolve concerns if those remedies are equivalent to divestitures in their effects.[164]

(267) It is against this background that the Commission analysed the proposed commitments in this case.

6.3. Initial Commitments

6.3.1. Description of the Initial Commitments

(268) The Initial Commitments consisted of the divestment of TWDC's direct and indirect ownership interests in the legal entities that hold the "factual" channels currently operated by A&E LLC (including its subsidiaries and joint ventures) in the EEA, which include the History, H2, and Crime + Investigation channels (the "Divestment Business").

(269) The Divestment Business also included all assets and staff that are primarily dedicated to and constitute the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

a. all tangible and intangible assets (including intellectual property rights but not including ownership rights in the: A&E, History, H2, Crime & Investigation, Blaze or Lifetime channel names or logos);

b. all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

160 Remedies Notice, Paragraph 9.
161 Remedies Notice, Paragraphs 13, 14 and 61 et seq.
162 Case T-177/04 easyJet v Commission [2006] ECR II-1913, Paragraph 197.
163 Remedies Notice, Paragraph 10.
164 Remedies Notice, Paragraph 61.

c. all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

d. the Personnel.

(270) In addition, the Initial Commitments included access to all current arrangements under which TWDC or its Affiliated Undertakings supply or make available assets, products or services to the Divestment Business for a transitional period of up to [...] years on terms and conditions equivalent to those at present afforded to the Divestment Business. The assets, products and services would relate to the supply of content and shared IT and corporate functions.

(271) With regards to supply of content, the Divestment Business procures audio-visual content from A&E LLC for use on their channels, under arm's length content licences. TWDC commits to procure that A&E LLC will amend the existing agreements in order to continue to supply such program rights to AETN Italy, THCG, AETN UK, and THCI (as appropriate) for a period of at least […] following the transfer of the Divestment Business to the Purchaser.

(272) With regards to supply of shared IT and corporate functions, AETN UK and AETN Italy rely on A&E LLC for certain software and IT support services.

6.3.2. Commission's assessment

(273) The Commission initiated a market test of the commitments on 16 October 2018 and received responses from TV distributors and TV broadcasters.

(274) The results of the market test were broadly positive on the concept of the Initial Commitment; market participants considered that in principle the Commitment constituted a structural solution for the competition concerns identified by the Commission with respect to the market for the wholesale supply of pay-TV channels. However, taking into account the responses from the market test, the Commission identified several shortcomings affecting the viability and the competitiveness of the Divestment Business.

(275) Taking into account the responses from the market test, the Commission subsequently assessed the commitments and concluded that they did not entirely remove its competition concerns.

(276) First, several respondents to the market test indicated that in order to ensure the viability of the Divestment Business, it would be necessary to guarantee the future programming supply to the Divestment Business by extending the duration of agreements related to the supply of content. Most of the respondents indicated that […] is a short duration and several respondents suggested that those agreements should remain in place for […].[165]

(277) Second, on the basis of information provided by respondents to the market test, the Commission considered that the Initial Commitments did not clearly indicate the duration, terms and conditions to which A&E, History, H2, Crime &

165 Replies to Market Test on Remedies of 16 October 2018, questions 7, 11, 17.

Investigation, Blaze or Lifetime trademarks, channel names or logos would have been made available to the Divestment Business. Several respondents indicated that those tangible assets are crucial to the viability of the Divestment Business. One respondent noted that channel carriage agreements are for branded channels and that without the brands there is a risk that those agreements will be terminated or renegotiated by the retail customers.[166]

(278) With regards to personnel, most of the respondents to the market test did not identify difficulties or risks in the implementation of the transfer of personnel.[167] Respondents mainly highlighted that key personnel responsible for taking decisions on the acquisition of content, distribution of channels or other strategic decision should be part of the Divestment Business.[168]

(279) […][169] […].[170]

6.4. Final Commitments

6.4.1. Description of the Final Commitments

(280) The Notifying Party submitted revised commitments on 24 October 2018, to address the shortcomings identified by the Commission subsequent to the market test. The Final Commitments consist of the revised version of the Initial Commitments and more precisely they contain the following main modifications.

(281) First, the Notifying Party has indicated the legal entities, with their assets and personnel, that hold the "factual" channels currently operated by A&E LLC (including its subsidiaries and joint ventures) in the EEA. Specifically: […][171]; […].[172]

(282) Second, the duration of transitional agreements related to the supply of content to the Divestment Business has been extended. The existing content supply agreements between A&E LLC and the Divestment Business will remain in place for a period of at least […] following the transfer of the Divestment Business to the Purchaser and on terms and conditions equivalent to those at present afforded to these entities.

(283) Third, the Final Commitments include the terms to which the Divestment Business will have access to A&E LLC's trademarks, channel names, logos. The Divestment Business will have access to those intangible assets at no charge and for as long as it is necessary to ensure the continued viability and competitiveness of the Divestment Business.

(284) […].

166 Replies to Market Test on Remedies of 16 October 2018, question 10.
167 Replies to Market Test on Remedies of 16 October 2018, questions 8.
168 Replies to Market Test on Remedies of 16 October 2018, question 9.
169 Replies to Market Test on Remedies of 16 October 2018, question 14.
170 Replies to Market Test on Remedies of 16 October 2018, question 15.
171 […].
172 […].

6.4.2. Commission's assessment

(285) In the Final Commitments, the Notifying Party's amendments appropriately address the shortcomings identified by the Commission affecting the viability and the competitiveness of the Divestment Business.

(286) First, under the Final Commitments, the duration of the content supply agreements has been extended in line with the suggestions received by market participants in the market test.

(287) Second, the Final Commitments clearly indicate the duration, terms and conditions to which A&E, History, H2, Crime & Investigation, Blaze or Lifetime trademarks, channel names or logos will be made available to the Divestment Business.

(288) Moreover, the Final Commitments clearly indicate the legal entities, their main assets, agreements with customers and personnel which form part of the Divestment Business.

(289) […].[173] […][174] […].

6.4.3. Conclusion

(290) For the reasons outlined above, the commitments entered into by the undertakings concerned are sufficient to eliminate the serious doubts as to the compatibility of the Transaction with the internal market.

(291) Under the first sentence of the second subparagraph of Article 6(2) of the Merger Regulation, the Commission may attach to its decision conditions and obligations intended to ensure that the undertakings concerned comply with the commitments they have entered into vis-à-vis the Commission with a view to rendering the concentration compatible with the internal market.

(292) The fulfilment of the measure that gives rise to the structural change of the market is a condition, whereas the implementing steps which are necessary to achieve this result are generally obligations on the Parties. Where a condition is not fulfilled, the Commission's decision declaring the concentration compatible with the internal market is no longer applicable. Where the undertakings concerned commit a breach of an obligation, the Commission may revoke the clearance decision in accordance with Article 6(3) of the Merger Regulation. The undertaking concerned may also be subject to fines and periodic penalty payments under Articles 14(2) and 15(1) of the Merger Regulation.

(293) In accordance with the basic distinction between conditions and obligations, the commitments in Section B and the Schedule of the Annex constitute conditions attached to this decision, as only through full compliance therewith can the structural changes in the relevant markets be achieved. The other commitments set out in the Annex constitute obligations, as they concern the implementing

[173] Paragraph 2 of the Final Commitments.
[174] Notice on remedies, paragraph 55.

steps which are necessary to achieve the modifications sought in a manner compatible with the internal market.

(294) The full text of the Final Commitments is attached to this Decision as the Annex and forms an integral part thereof.

7. CONCLUSION

(295) For the above reasons, the Commission has decided not to oppose the Transaction as modified by the Final Commitments and to declare it compatible with the internal market and with the functioning of the EEA Agreement, subject to full compliance with the conditions in Section B and the Schedule of the Final Commitments annexed to this decision and with the obligations contained in the other paragraphs of the Final Commitments. This decision is adopted in application of Article 6(1)(b) in conjunction with Article 6(2) of the Merger Regulation and Article 57 of the EEA Agreement.

For the Commission

(Signed)
Margrethe VESTAGER
Member of the Commission

Case M. 8785 – THE WALT DISNEY COMPANY / TWENTY-FIRST CENTURY FOX

COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EC) No 139/2004 (the "***Merger Regulation***"), The Walt Disney Company ("TWDC") (the "***Notifying Party***") hereby enters into the following Commitments (the "***Commitments***") vis-à-vis the European Commission (the "***Commission***") with a view to rendering its acquisition of sole control of certain subsidiaries of Twenty-First Century Fox, Inc (the "***Concentration***") compatible with the internal market and the functioning of the EEA Agreement.

This text shall be interpreted in light of the Commission's decision pursuant to Article 6(1)(b) of the Merger Regulation of the Merger Regulation to declare the Concentration compatible with the internal market and the functioning of the EEA Agreement (the "***Decision***"), in the general framework of European Union law, in particular in light of the Merger Regulation, and by reference to the Commission Notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (the "***Remedies Notice***").

Section A. Definitions

1. For the purpose of the Commitments, the following terms shall have the following meaning:

   A&E LLC: A&E Television Networks, LLC

   Affiliated Undertakings: undertakings controlled by the Parties and/or by the ultimate parents of the Parties, whereby the notion of control shall be interpreted pursuant to Article 3 of the Merger Regulation and in light of the Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings (the "***Consolidated Jurisdictional Notice***").

   Assets: the assets that are primarily related to the Divestment Business and contribute to the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business as indicated in Section B, paragraph 5 (a), (b) and (c) and described more in detail in the Schedule.

   Closing: the transfer of the legal title to the Divestment Business to the Purchaser.

   Closing Period: the period of […] from the approval of the Purchaser and the terms of sale by the Commission, or the date on which the Concentration closes, whichever is later.

   Confidential Information: any business secrets, know-how, commercial information, or any other information of a proprietary nature that is not in the public domain.

Conflict of Interest: any conflict of interest that impairs the Trustee's objectivity and independence in discharging its duties under the Commitments.

Divestment Business: the business or businesses as defined in Section B and in the Schedule which the Notifying Party commits to divest.

Divestiture Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by TWDC and who has/have received from TWDC the exclusive Trustee Mandate to sell the Divestment Business to a Purchaser at no minimum price.

Effective Date: the date of adoption of the Decision.

First Divestiture Period: the period of […] from the Effective Date.

Hold Separate Manager: the person appointed by TWDC or an Affiliated Undertaking for the Divestment Business to manage the day-to-day business under the supervision of the Monitoring Trustee.

Key Personnel: all personnel necessary to maintain the viability and competitiveness of the Divestment Business, as listed in the Schedule, including the Hold Separate Manager.

Monitoring Trustee: one or more natural or legal person(s) who is/are approved by the Commission and appointed by TWDC, and who has/have the duty to monitor TWDC's compliance with the conditions and obligations attached to the Decision.

Parties: the Notifying Party and the undertaking that is the target of the concentration.

Personnel: all staff currently employed by the Divestment Business, including staff seconded to the Divestment Business, shared personnel primarily devoted to the Divestment Business as well as the additional personnel listed in the Schedule.

Purchaser: the entity approved by the Commission as acquirer of the Divestment Business in accordance with the criteria set out in Section D.

Purchaser Criteria: the criteria laid down in paragraph 17 of these Commitments that the Purchaser must fulfil in order to be approved by the Commission.

Schedule: the schedule to these Commitments describing more in detail the Divestment Business.

Trustee(s): the Monitoring Trustee and/or the Divestiture Trustee as the case may be.

Trustee Divestiture Period: the period of […] from the end of the First Divestiture Period.

The Walt Disney Company ("TWDC"): The Walt Disney Company, incorporated under the laws of the State of Delaware, with its registered office at 500 South Buena Vista Street Burbank, California 91521.

Section B. The commitment to divest and the Divestment Business

Commitment to divest

2. In order to maintain effective competition, TWDC commits to divest, or procure the divestiture of, the Divestment Business by the end of the Trustee Divestiture Period as a going concern to a purchaser and on terms of sale approved by the Commission in accordance with the procedure described in paragraph 18 of these Commitments ("***Divestiture***"). To carry out the divestiture, TWDC commits to find a purchaser and to enter into a final binding sale and purchase agreement for the sale of the Divestment Business within the First Divestiture Period. If TWDC has not entered into such an agreement at the end of the First Divestiture Period, TWDC shall grant the Divestiture Trustee an exclusive mandate to sell the Divestment Business in accordance with the procedure described in paragraph 30 in the Trustee Divestiture Period. The proposed concentration shall not be implemented before TWDC or the Divestiture Trustee and Purchaser have entered into a final binding sale and purchase agreement for the sale of the Divestment Business and the Commission has approved the Purchaser and the terms of sale in accordance with paragraph 18.

3. TWDC shall be deemed to have complied with this commitment if:

   (a) by the end of the Trustee Divestiture Period, TWDC or the Divestiture Trustee and the Purchaser have entered into a final binding sale and purchase agreement and the Commission approves the proposed purchaser and the terms of sale as being consistent with the Commitments in accordance with the procedure described in paragraph 18; and

   (b) the Closing of the sale of the Divestment Business to the Purchaser takes place within the Closing Period.

4. In order to maintain the structural effect of the Commitments, the Notifying Party shall, for a period of 10 years after Closing, not acquire, whether directly or indirectly, the possibility of exercising influence (as defined in paragraph 43 of the Remedies Notice, footnote 3) over the whole or part of the Divestment Business, unless, following the submission of a reasoned request from the Notifying Party showing good cause and accompanied by a report from the Monitoring Trustee (as provided in paragraph 44 of these Commitments), the Commission finds that the structure of the market has changed to such an extent that the absence of influence over the Divestment Business is no longer necessary to render the proposed concentration compatible with the internal market.

Structure and definition of the Divestment Business

5. The Divestment Business consists of TWDC's ownership interests in the legal entities that hold the "factual" channels currently operated by A&E LLC (including its subsidiaries and joint ventures) in the EEA, which include the History, H2, and Crime + Investigation channels operated by A&E LLC (including its subsidiaries and joint ventures) in the EEA. The legal and functional structure of the Divestment Business as operated to date is described in the Schedule. The Divestment Business includes all assets and staff that are primarily dedicated to and constitute the current operation or are necessary to ensure the viability and competitiveness of the Divestment Business, in particular:

   (a) all tangible and intangible assets (including intellectual property rights but not including ownership rights in the: A&E, History, H2, Crime & Investigation, Blaze or Lifetime trademarks, channel names, or logos);

   (b) all licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business;

   (c) all contracts, leases, commitments and customer orders of the Divestment Business; all customer, credit and other records of the Divestment Business; and

   (d) the Personnel.

6. TWDC commits to procure that A&E LLC will maintain the existing content supply agreements listed under 6(c) of the Schedule in order to continue to supply such program rights (including rights to new programs that become available during this period) to AETN Italy, THCG, AETN UK, and THCI (as appropriate) for a period of at least […] years following the transfer of the Divestment Business to the Purchaser and on terms and conditions equivalent to those at present afforded to these entities. At the Purchaser's election, program rights made available to AETN Italy, THCG, AETN UK, and THCI (as appropriate) under this clause will include rights to content made available to A&E LLC's channels operating outside the EEA under the A&E, Blaze, Lifetime, History, H2, or Crime + Investigation (or similar) channel names.

7. TWDC commits to enter into the necessary contract arrangements to ensure that A&E LLC will make available to the Divestment Business at no charge the A&E LLC's trademarks, channel names, and logos to AETN Italy, THCG, AETN UK, and THCI for as long as it is necessary to ensure the continued viability and competitiveness of the Divestment Business .

8. In addition, the Divestment Business includes the benefit, for a transitional period of up to […] after Closing and on terms and conditions equivalent to those at present afforded to the Divestment Business, of all other current arrangements under which TWDC or its Affiliated Undertakings supply or make available assets, products or services to the Divestment Business, as detailed in the Schedule, unless otherwise agreed with the Purchaser. Strict firewall procedures will be adopted so as to ensure that any competitively sensitive information related to, or arising from such supply arrangements (for example, product roadmaps) will not be shared with, or passed on to, anyone outside the business units supplying or making available such assets, products or services.

Section C. Related commitments

Preservation of viability, marketability and competitiveness

9. From the Effective Date until Closing, the Notifying Party shall preserve or procure the preservation of the economic viability, marketability and competitiveness of the Divestment Business, in accordance with good business practice, and shall minimise as far as possible any risk of loss of competitive potential of the Divestment Business. In particular TWDC undertakes:

   (a) not to carry out any action that might have a significant adverse impact on the value, management or competitiveness of the Divestment Business or that might alter the nature and scope of activity, or the industrial or commercial strategy or the investment policy of the Divestment Business;

   (b) to make available, or procure to make available, sufficient resources for the development of the Divestment Business, on the basis and continuation of the existing business plans;

   (c) to take all reasonable steps, or procure that all reasonable steps are being taken, including appropriate incentive schemes (based on industry practice), to encourage all Key Personnel to remain with the Divestment Business, and not to solicit or move any Personnel to TWDC's remaining business. Where, nevertheless, individual members of the Key Personnel exceptionally leave the Divestment Business, TWDC shall provide a reasoned proposal to replace the person or persons concerned to the Commission and the Monitoring Trustee. TWDC must be able to demonstrate to the Commission that the replacement is well suited to carry out the functions exercised by those individual members of the Key Personnel. The replacement shall take place under the supervision of the Monitoring Trustee, who shall report to the Commission.

Hold-separate obligations

10. The Notifying Party commits, from the Effective Date until Closing, to procure that the Divestment Business is kept separate from the business(es) that the Notifying Party and A&E LLC will be retaining and, after closing of the Concentration to keep the Divestment Business Separate from the business that the Notifying Party and A&E LLC is retaining and to ensure that unless explicitly permitted under these Commitments: (i) management and staff of the business(es) retained by TWDC have no involvement in the Divestment Business; (ii) the Key Personnel and Personnel of the Divestment Business have no involvement in any business retained by TWDC and do not report to any individual outside the Divestment Business.

11. Until Closing, TWDC shall assist the Monitoring Trustee in ensuring that the Divestment Business is managed as a distinct and saleable entity separate from the business(es) which TWDC (including its Affiliated Undertakings) is retaining. Immediately after the adoption of the Decision, TWDC shall appoint, or procure the appointment of, a Hold Separate Manager. The Hold Separate Manager, who shall be part of the Key Personnel, shall manage the Divestment Business independently and in the best interest of the business with a view to

ensuring its continued economic viability, marketability and competitiveness and its independence from the businesses retained by TWDC. The Hold Separate Manager shall closely cooperate with and report to the Monitoring Trustee and, if applicable, the Divestiture Trustee. Any replacement of the Hold Separate Manager shall be subject to the procedure laid down in paragraph 8(c) of these Commitments. The Commission may, after having heard TWDC, require TWDC to replace the Hold Separate Manager.

Ring-fencing

12. TWDC shall implement, or procure to implement, all necessary measures to ensure that it does not, after the Effective Date , obtain any Confidential Information relating to the Divestment Business and that any such Confidential Information obtained by TWDC before the Effective Date will be eliminated and not be used by TWDC, except as is necessary to ensure the viability of the Divestment Business (including as is necessary for any retained businesses to provide transitional services to the Divestment Business) and to meet TWDC's legal and statutory obligations. This includes measures vis-à-vis TWDC's appointees on the supervisory board and/or board of directors of the A&E LLC. In particular, the participation of the Divestment Business in any central information technology network shall be severed to the extent possible, without compromising the viability of the Divestment Business. TWDC may obtain or keep information relating to the Divestment Business which is reasonably necessary for the divestiture of the Divestment Business or the disclosure of which to TWDC is required by law.

Non-solicitation clause

13. TWDC undertakes, subject to customary limitations, not to solicit, and to procure that Affiliated Undertakings do not solicit, the Key Personnel transferred with the Divestment Business for a period of two years after Closing.

Due diligence

14. In order to enable potential purchasers to carry out a reasonable due diligence of the Divestment Business, TWDC shall, subject to customary confidentiality assurances and dependent on the stage of the divestiture process, and to the extent reasonably possible:
    (a) provide to potential purchasers sufficient information as regards the Divestment Business;
    (b) provide to potential purchasers sufficient information relating to the Personnel and allow them reasonable access to the Personnel.

Reporting

15. TWDC shall submit written reports in English on potential purchasers of the Divestment Business and developments in the negotiations with such potential purchasers to the Commission and the Monitoring Trustee no later than 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request). TWDC shall submit a list of all potential purchasers having expressed interest in acquiring the Divestment Business to the Commission at each and every stage of the divestiture process, as well as a copy of all the offers made by potential purchasers within five days of their receipt.

16. TWDC shall inform the Commission and the Monitoring Trustee on the preparation of the data room documentation and the due diligence procedure and shall submit a copy of any information memorandum to the Commission and the Monitoring Trustee before sending the memorandum out to potential purchasers.

Section D. The Purchaser

17. In order to be approved by the Commission, the Purchaser must fulfil the following criteria:

    (a) The Purchaser shall be independent of the Notifying Party and its Affiliated Undertakings (this being assessed having regard to the situation following the divestiture).
    (b) The Purchaser shall have the financial resources, proven expertise and incentive to maintain and develop the Divestment Business as a viable and active competitive force in competition with the Parties and other competitors;
    (c) The acquisition of the Divestment Business by the Purchaser must neither be likely to create, in light of the information available to the Commission, *prima facie* competition concerns nor give rise to a risk that the implementation of the Commitments will be delayed. In particular, the Purchaser must reasonably be expected to obtain all necessary approvals from the relevant regulatory authorities for the acquisition of the Divestment Business.

18. The final binding sale and purchase agreement (as well as ancillary agreements) relating to the divestment of the Divestment Business shall be conditional on the Commission's approval. When TWDC has reached an agreement with a purchaser, it shall submit a fully documented and reasoned proposal, including a copy of the final agreement(s), within one week to the Commission and the Monitoring Trustee. TWDC must be able to demonstrate to the Commission that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commission's Decision and the Commitments. For the approval, the Commission shall verify that the purchaser fulfils the Purchaser Criteria and that the Divestment Business is being sold in a manner consistent with the Commitments including their objective to bring about a lasting structural change in the market. The Commission may approve the sale of the Divestment Business without one or more Assets or parts of the Personnel, or by substituting one or more Assets or parts of the Personnel with one or more different assets or different personnel, if this does not affect the viability and competitiveness of the Divestment Business after the sale, taking account of the proposed purchaser.

Section E. Trustee

I. Appointment procedure

19. TWDC shall appoint a Monitoring Trustee to carry out the functions specified in these Commitments for a Monitoring Trustee. The Notifying Party commits not to close the Concentration before the appointment of a Monitoring Trustee.

20. If TWDC has not entered into a binding sale and purchase agreement regarding the Divestment Business one month before the end of the First Divestiture Period or if the Commission has rejected a purchaser proposed by TWDC at that time or thereafter, TWDC shall appoint a Divestiture Trustee. The appointment of the Divestiture Trustee shall take effect upon the commencement of the Trustee Divestiture Period.

21. The Trustee shall:
    (i) at the time of appointment, be independent of the Notifying Party and its/their Affiliated Undertakings;
    (ii) possess the necessary qualifications to carry out its mandate, for example have sufficient relevant experience as an investment banker or consultant or auditor; and
    (iii) neither have nor become exposed to a Conflict of Interest.

22. The Trustee shall be remunerated by the Notifying Party in a way that does not impede the independent and effective fulfilment of its mandate. In particular, where the remuneration package of a Divestiture Trustee includes a success premium linked to the final sale value of the Divestment Business, such success premium may only be earned if the divestiture takes place within the Trustee Divestiture Period.

Proposal by TWDC

23. No later than two weeks after the Effective Date, TWDC shall submit the name or names of one or more natural or legal persons whom TWDC proposes to appoint or cause to be appointed as the Monitoring Trustee to the Commission for approval. No later than one month before the end of the First Divestiture Period or on request by the Commission, TWDC shall submit a list of one or more persons whom TWDC proposes to appoint as Divestiture Trustee to the Commission for approval. The proposal shall contain sufficient information for the Commission to verify that the person or persons proposed as Trustee fulfil the requirements set out in paragraph 21 and shall include:

    (a) the full terms of the proposed mandate, which shall include all provisions necessary to enable the Trustee to fulfil its duties under these Commitments;

    (b) the outline of a work plan which describes how the Trustee intends to carry out its assigned tasks;

    (c) an indication whether the proposed Trustee is to act as both Monitoring Trustee and Divestiture Trustee or whether different trustees are proposed for the two functions.

Approval or rejection by the Commission

24. The Commission shall have the discretion to approve or reject the proposed Trustee(s) and to approve the proposed mandate subject to any modifications it deems necessary for the Trustee to fulfil its obligations. If only one name is approved, TWDC shall appoint or cause to be appointed the person or persons concerned as Trustee, in accordance with the mandate approved by the Commission. If more than one name is approved, TWDC shall be free to

choose the Trustee to be appointed from among the names approved. The Trustee shall be appointed within one week of the Commission's approval, in accordance with the mandate approved by the Commission.

New proposal by the TWDC

25. If all the proposed Trustees are rejected, TWDC shall submit the names of at least two more natural or legal persons within one week of being informed of the rejection, in accordance with paragraphs 19 and 24 of these Commitments.

Trustee nominated by the Commission

26. If all further proposed Trustees are rejected by the Commission, the Commission shall nominate a Trustee, whom TWDC shall appoint, or cause to be appointed, in accordance with a trustee mandate approved by the Commission.

II. Functions of the Trustee

27. The Trustee shall assume its specified duties and obligations in order to ensure compliance with the Commitments. The Commission may, on its own initiative or at the request of the Trustee or TWDC, give any orders or instructions to the Trustee in order to ensure compliance with the conditions and obligations attached to the Decision.

Duties and obligations of the Monitoring Trustee

28. The Monitoring Trustee shall:

(i) propose in its first report to the Commission a detailed work plan describing how it intends to monitor compliance with the obligations and conditions attached to the Decision.

(ii) oversee, in close co-operation with the Hold Separate Manager, the on-going management of the Divestment Business with a view to ensuring its continued economic viability, marketability and competitiveness and monitor compliance by TWDC with the conditions and obligations attached to the Decision. To that end the Monitoring Trustee shall:

(a) monitor the preservation of the economic viability, marketability and competitiveness of the Divestment Business, and the keeping separate of the Divestment Business from the business retained by the Parties (including its Affiliated Undertakings), in accordance with paragraphs 9 and 10 of these Commitments;

(b) supervise the management of the Divestment Business as a distinct and saleable entity, in accordance with paragraph 11 of these Commitments;

(c) with respect to Confidential Information:

- determine all necessary measures to ensure that TWDC does not after the Effective Date obtain any Confidential Information relating to the Divestment Business,
- in particular strive for the severing of the Divestment Business' participation in a central information technology network to the extent possible, without compromising the viability of the Divestment Business,
- make sure that any Confidential Information relating to the Divestment Business obtained by TWDC before the Effective Date is eliminated and will not be used by TWDC and
- decide whether such information may be disclosed to or kept by TWDC as the disclosure is reasonably necessary to allow TWDC to carry out the divestiture or as the disclosure is required by law;

(d) monitor the splitting of assets and the allocation of Personnel between the Divestment Business and TWDC or Affiliated Undertakings;

(iii) propose to TWDC such measures as the Monitoring Trustee considers necessary to ensure TWDC's compliance with the conditions and obligations attached to the Decision, in particular the maintenance of the full economic viability, marketability or competitiveness of the Divestment Business, the holding separate of the Divestment Business and the non-disclosure of competitively sensitive information;

(iv) review and assess potential purchasers as well as the progress of the divestiture process and verify that, dependent on the stage of the divestiture process:

(a) potential purchasers receive sufficient and correct information relating to the Divestment Business and the Personnel in particular by reviewing, if available, the data room documentation, the information memorandum and the due diligence process, and

(b) potential purchasers are granted reasonable access to the Personnel;

(v) act as a contact point for any requests by third parties, in particular potential purchasers, in relation to the Commitments;

(vi) provide to the Commission, sending TWDC a non-confidential copy at the same time, a written report within 15 days after the end of every month that shall cover the operation and management of the Divestment Business as well as the splitting of assets and the allocation of Personnel so that the Commission can assess whether the business is held in a manner consistent with the Commitments and the progress of the divestiture process as well as potential purchasers;

(vii) promptly report in writing to the Commission, sending TWDC a non-confidential copy at the same time, if it concludes on reasonable grounds that TWDC is failing to comply with these Commitments;

(viii) within one week after receipt of the documented proposal referred to in paragraph 18 of these Commitments, submit to the Commission, sending TWDC a non-confidential copy at the same time, a reasoned opinion as to the suitability and independence of the proposed purchaser and the viability of the Divestment Business after the Sale and as to whether the Divestment Business is sold in a manner consistent with the conditions and obligations attached to the Decision, in particular, if relevant, whether the Sale of the Divestment Business without one or more Assets or not all of the Personnel affects the viability of the Divestment Business after the sale, taking account of the proposed purchaser;

(ix) assume the other functions assigned to the Monitoring Trustee under the conditions and obligations attached to the Decision.

29. If the Monitoring and Divestiture Trustee are not the same legal or natural persons, the Monitoring Trustee and the Divestiture Trustee shall cooperate closely with each other during and for the purpose of the preparation of the Trustee Divestiture Period in order to facilitate each other's tasks.

Duties and obligations of the Divestiture Trustee

30. Within the Trustee Divestiture Period, the Divestiture Trustee shall sell at no minimum price the Divestment Business to a purchaser, provided that the Commission has approved both the purchaser and the final binding sale and purchase agreement (and ancillary agreements) as in line with the Commission's Decision and the Commitments in accordance with paragraphs 17 and 18 of these Commitments. The Divestiture Trustee shall include in the sale and purchase agreement (as well as in any ancillary agreements) such terms and conditions as it considers appropriate for an expedient sale in the Trustee Divestiture Period. In particular, the Divestiture Trustee may include in the sale and purchase agreement such customary representations and warranties and indemnities as are reasonably required to effect the sale. The Divestiture Trustee shall protect the legitimate financial interests of TWDC, subject to the Notifying Party's unconditional obligation to divest at no minimum price in the Trustee Divestiture Period.

31. In the Trustee Divestiture Period (or otherwise at the Commission's request), the Divestiture Trustee shall provide the Commission with a comprehensive monthly report written in English on the progress of the divestiture process. Such reports shall be submitted within 15 days after the end of every month with a simultaneous copy to the Monitoring Trustee and a non-confidential copy to the Notifying Party.

III. Duties and obligations of the Parties

32. TWDC shall provide and shall cause its advisors to provide the Trustee with all such co-operation, assistance and information as the Trustee may reasonably require to perform its tasks. The Trustee shall have or TWDC shall procure full and complete access to any of TWDC's or the Divestment Business' books, records, documents, management or other personnel, facilities, sites and technical information necessary for fulfilling its duties under the Commitments and TWDC and the Divestment Business shall provide the Trustee upon request with copies of any document. TWDC shall procure for the Divestment Business to

make available to the Trustee one or more offices on their premises and shall be available for meetings in order to provide the Trustee with all information necessary for the performance of its tasks.

33. TWDC shall provide or procure for the Monitoring Trustee all managerial and administrative support that it may reasonably request on behalf of the management of the Divestment Business. This shall include all administrative support functions relating to the Divestment Business which are currently carried out at headquarters level. TWDC shall provide and shall cause its advisors to provide the Monitoring Trustee, on request, with the information submitted to potential purchasers, in particular give the Monitoring Trustee access to the data room documentation and all other information granted to potential purchasers in the due diligence procedure. TWDC shall inform the Monitoring Trustee on possible purchasers, submit lists of potential purchasers at each stage of the selection process, including the offers made by potential purchasers at those stages, and keep the Monitoring Trustee informed of all developments in the divestiture process.

34. TWDC shall grant or procure Affiliated Undertakings to grant comprehensive powers of attorney, duly executed, to the Divestiture Trustee to effect the sale (including ancillary agreements), the Closing and all actions and declarations which the Divestiture Trustee considers necessary or appropriate to achieve the sale and the Closing, including the appointment of advisors to assist with the sale process. Upon request of the Divestiture Trustee, TWDC shall cause the documents required for effecting the sale and the Closing to be duly executed.

35. TWDC shall indemnify the Trustee and its employees and agents (each an "***Indemnified Party***") and hold each Indemnified Party harmless against, and hereby agrees that an Indemnified Party shall have no liability to TWDC for, any liabilities arising out of the performance of the Trustee's duties under the Commitments, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence or bad faith of the Trustee, its employees, agents or advisors.

36. At the expense of TWDC, the Trustee may appoint advisors (in particular for corporate finance or legal advice), subject to TWDC's approval (this approval not to be unreasonably withheld or delayed) if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the Mandate, provided that any fees and other expenses incurred by the Trustee are reasonable. Should TWDC refuse to approve the advisors proposed by the Trustee the Commission may approve the appointment of such advisors instead, after having heard TWDC. Only the Trustee shall be entitled to issue instructions to the advisors. Paragraph 35 of these Commitments shall apply *mutatis mutandis*. In the Trustee Divestiture Period, the Divestiture Trustee may use advisors who served TWDC during the Divestiture Period if the Divestiture Trustee considers this in the best interest of an expedient sale.

37. TWDC agrees that the Commission may share Confidential Information proprietary to TWDC with the Trustee. The Trustee shall not disclose such information and the principles contained in Article 17 (1) and (2) of the Merger Regulation apply *mutatis mutandis*.

38. The Notifying Party agrees that the contact details of the Trustee are published on the website of the Commission's Directorate-General for Competition and they shall inform interested third parties, in particular any potential purchasers, of the identity and the tasks of the Trustee.

39. For a period of 10 years from the Effective Date the Commission may request all information from the Parties that is reasonably necessary to monitor the effective implementation of these Commitments.

IV. Replacement, discharge and reappointment of the Trustee

40. If the Trustee ceases to perform its functions under the Commitments or for any other good cause, including the exposure of the Trustee to a Conflict of Interest:

(a) the Commission may, after hearing the Trustee and TWDC, require TWDC to replace the Trustee; or

(b) TWDC may, with the prior approval of the Commission, replace the Trustee.

41. If the Trustee is removed according to paragraph 40 of these Commitments, the Trustee may be required to continue in its function until a new Trustee is in place to whom the Trustee has effected a full hand over of all relevant information. The new Trustee shall be appointed in accordance with the procedure referred to in paragraphs 19-26 of these Commitments.

42. Unless removed according to paragraph 40 of these Commitments, the Trustee shall cease to act as Trustee only after the Commission has discharged it from its duties after all the Commitments with which the Trustee has been entrusted have been implemented. However, the Commission may at any time require the reappointment of the Monitoring Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

Section F. The review clause

43. The Commission may extend the time periods foreseen in the Commitments in response to a request from TWDC or, in appropriate cases, on its own initiative. Where TWDC requests an extension of a time period, it shall submit a reasoned request to the Commission no later than one month before the expiry of that period, showing good cause**.** This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. Only in exceptional circumstances shall TWDC be entitled to request an extension within the last month of any period.

44. The Commission may further, in response to a reasoned request from the Notifying Party showing good cause waive, modify or substitute, in exceptional circumstances, one or more of the undertakings in these Commitments. This request shall be accompanied by a report from the Monitoring Trustee, who shall, at the same time send a non-confidential copy of the report to the Notifying Party. The request shall not have the effect of suspending the application of the undertaking and, in particular, of suspending the expiry of any time period in which the undertaking has to be complied with.

Section G. Entry into force

45. The Commitments shall take effect upon the date of adoption of the Decision.

……
duly authorised for and on behalf of
The Walt Disney Company

SCHEDULE

1. The Divestment Business consists of TWDC's ownership interests (through certain TWDC subsidiaries) in certain legal entities held by A&E Television Networks, LLC ("A&E LLC", a limited liability company under Delaware law), which are active in the wholesale supply of pay-TV channels in the EEA.

2. Specifically, the Divestment Business consists of TWDC's ownership interests in the following legal entities:

   a. A&E Television Networks Italy S.r.l. ("AETN Italy"), […], with registered offices in Via Salaria 222, 00198 Roma, Italy;

   b. The History Channel (Germany) GmbH &Co. KG ("THCG"), […], with registered offices in Theresienstr. 47a, D-80333 Munich, Germany. […]

   c. The History Channel, Iberia B.V. […] (Spain) ("THCI"), C/Saturno nº 1 de Pozuelo de Alarcón, 28224 Madrid, Spain;

   d. AETN UK ("AETN UK"), […], 1 Queen Caroline St, London W6 9DZ, United Kingdom. […]

3. […]

4. With respect to the EEA, AETN Italy, THCG, THCI, and AETN UK operate the wholesale supply of the channels listed in Table 1, which includes all of A&E's "factual" channels supplied in the EEA:

Table 1: A&E LLC Channels in EEA Countries

EEA Country	Channels
Austria	A&E, History
Belgium	History
Bulgaria	Crime + Investigation, History, H2
Croatia	Crime + Investigation, History
Cyprus	History
Czech Republic	Crime + Investigation, H2, History
Denmark	History, H2
Estonia	History, H2
Finland	History, H2
Germany	A&E, History
Greece	Crime + Investigation, History
Hungary	History
Iceland	H2, History
Ireland	Blaze, Crime + Investigation, History, H2, Lifetime
Italy	Blaze, Crime + Investigation, History
Latvia	History, H2
Liechtenstein	A&E, History
Lithuania	History
Malta	Crime + Investigation, History, H2, Lifetime
Netherlands	Crime + Investigation, History
Norway	H2, History
Poland	Crime + Investigation, History, H2, Lifetime
Portugal	Blaze, Crime + Investigation, History

EEA Country	Channels
Romania	Crime + Investigation, History
Slovakia	Crime + Investigation, History, H2
Slovenia	Crime + Investigation, History, H2
Spain	Blaze, Crime + Investigation, History
Sweden	H2, History
United Kingdom	Blaze, Crime + Investigation, History, H2, Lifetime

5. The A&E LLC entities listed above also operate channels outside the EEA: (i) AETN UK wholesales A&E LLC's channels in some European countries outside the EEA (*e.g.*, Albania, Bosnia, Kosovo, Macedonia, Montenegro, and Serbia), the Middle East, and Africa; and (ii) THCI wholesales A&E LLC's channels in Portuguese-speaking Africa. TWDC's interests in these channels will therefore also be divested under the Remedy Proposal.

6. In accordance with paragraph 5 of these Commitments, THCG, THCI, AETN Italy, and AETN UK include the following:

   a. The following main tangible and intangible assets valued as of September 30, 2018:

Table 2: Main Tangible and Intangible Assets

[…]

The companies mentioned above have a license for a number of trade-marks […].

- THCG: A&E and History trademarks, […]);
- THCI: Blaze, Crime + Investigation, and History trademarks, […];
- AETN Italy: Blaze, Crime + Investigation, and History trademarks, […]
- AETN UK: Blaze, Crime + Investigation, History, H2, and Lifetime trademarks, […].

   b. the following main licenses, permits and authorisations: […]

   c. the following main agreements concerning the licensing of content from A&E LLC […]

   d. all the agreements related to A&E channels in the EEA with the entities listed in Annex 23 of Chapter 2C of the Form CO.

   e. all the personnel currently employed by THCG, THCI, AETN Italy, and AETN UK, including their subsidiaries and JV.

   f. All the Key Personnel, namely: […]

7. TWDC commits to procure that A&E LLC will maintain the existing content supply agreements listed under 6(c) of this Schedule in order to continue to supply such program rights (including rights to new programs that become available during this period) to AETN Italy, THCG, AETN UK, and THCI (as appropriate) for a period of at least […] years following the transfer of the Divestment Business to the Purchaser and on terms and conditions equivalent to those at present afforded to these entities. At the Purchaser's election, program rights made available to AETN Italy, THCG, AETN UK, and THCI (as appropriate) under this clause will include rights to content made available to A&E LLC's channels operating outside the EEA under the A&E, Blaze, Lifetime, History, H2, or Crime + Investigation (or similar) channel names.

8. TWDC commits to enter into the necessary contract arrangements to ensure that A&E LLC will make available to the Divestment Business at no charge the A&E LLC's trademarks, channel names, and logos to AETN Italy, THCG, AETN UK, and THCI for as long as it is necessary to ensure the continued viability and competitiveness of the Divestment Business.

9. TWDC commits to procure that, during a transitional period of up to […], A&E LLC will continue to make the necessary IT functions available to AETN UK and AETN Italy.

10. TWDC commits to procure that, during a transitional period of up to […..], A&E LLC will continue to make employees at its International Division and the Finance & Accounting, Legal & Business Affairs, Human Resources, Facilities, and Technology Departments available for consultation with AETN Italy, THCG, AETN UK, and THCI.

11. The Divestment Business shall not include TWDC's interests in any channels or businesses other than those listed above, whether operated by A&E LLC, TWDC, or 21CF (or entities under their "control" for the purposes of the EU Merger Regulation).

12. If there is any asset or personnel which is not covered by paragraphs 2-10 of this Schedule but which is both used (exclusively or not) in the Divestment Business and necessary for its continued viability and competitiveness, that asset or adequate substitute will be offered to the Purchaser. For avoidance of doubt this should also include personnel or assets owned or employed by A&E LLC.