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(!) Text with EEA relevance

II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES
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EUROPEAN COMMISSION

Non-opposition to a notified concentration**(Case M.7597 — Sabadell/TSB)****(Text with EEA relevance)**

(2015/C 175/01)

On 18 May 2015, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No. 139/2004 ⁽¹⁾. The full text of the decision is available only in English language and will be made public after it is cleared of any business secrets it may contain. It will be available:

- in the merger section of the Competition website of the Commission (<http://ec.europa.eu/competition/mergers/cases/>). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,
- in electronic form on the EUR-Lex website (<http://eur-lex.europa.eu/homepage.html?locale=en>) under document number 32015M7597. EUR-Lex is the online access to the European law.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 13 March 2015

on a proposal for a regulation of the European Parliament and the Council on harmonised indices of consumer prices and repealing Council Regulation (EC) No 2494/95**(CON/2015/10)**

(2015/C 175/02)

Introduction and legal basis

On 17 December 2014, the European Central Bank (ECB) received a request from the European Parliament for an opinion on a proposal for a Regulation of the European Parliament and of the Council on harmonised indices of consumer prices ⁽¹⁾ (HICP) (hereinafter the 'proposed regulation'). This legal act would repeal and replace Council Regulation (EC) No 2494/95 ⁽²⁾. On 26 January 2015, the ECB was consulted on the same proposal by the Council of the European Union.

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union. The proposed regulation lies within the ECB's fields of competence as the ECB is a key user of HICP statistics. Harmonised indices of consumer prices are important indicators in the context of monetary policy. They are of crucial importance to the ECB's primary objective of maintaining price stability in the euro area ⁽³⁾, as sound monetary policy decisions depend on reliable and high quality HICP statistics. They also support the Eurosystem's tasks in the area of financial market stability ⁽⁴⁾.

In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. General observations

The ECB supports the efforts undertaken by the European Commission (Eurostat) concerning the review and modernisation of the Union legal framework for compilation of HICP statistics.

2. Consultation of the ECB and its involvement in the preparatory and implementing work

2.1. Given the ECB's consistent contributions to the HICP framework and the importance of high quality HICP statistics for sound monetary policy and, in particular, for the pursuit of the ECB's primary objective of price stability, the ECB should continue to be consulted on future modifications of this framework ⁽⁵⁾.

⁽¹⁾ COM(2014) 724 final.

⁽²⁾ Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices (OJ L 257, 27.10.1995, p. 1).

⁽³⁾ See Article 127(1) of the Treaty and first sentence of Article 2 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB').

⁽⁴⁾ See the first indent of Article 127(2) and Article 127(5) in conjunction with Article 139(2)(c) of the Treaty and the first indent of Article 3.1 and Article 3.3, in conjunction with Article 42.1 of the Statute of the ESCB.

⁽⁵⁾ See Article 5(3) of Regulation (EC) No 2494/95 according to which the Commission shall request the ECB to provide an opinion on the measures which it proposes to submit to the European Statistical System Committee.

- 2.2. In particular, pursuant to Articles 127(4) and 282(5) of the Treaty, the ECB is to be consulted on any implementing and delegated acts, which the Commission may adopt under the revised legal framework for the HICP ⁽¹⁾. The obligation to consult, and the benefits of ECB consultation, were underlined by the European Court of Justice in *Commission v ECB* ⁽²⁾.
- 2.3. Consistent with the existing provisions of Regulation (EC) No 2494/95 ⁽³⁾, and notwithstanding the collaboration in the preparation of legislative acts, Recital 2 of the proposed regulation should reflect the ECB's competence to be consulted on implementing and delegated acts adopted under the proposed regulation.

3. Use of delegated and implementing acts

- 3.1. Regarding the Commission's power to adopt delegated acts based on Article 290 of the Treaty, the ECB considers the threshold below which there is no obligation for Member States to provide sub-indices of harmonised indices, and the list of sub-indices that need not be produced by Member States ⁽⁴⁾ to be essential elements of the proposed regulation. These items are fundamental to ensure sound and harmonised consumer price indices. Changes to these parameters have a direct effect on the coverage and on the soundness of the indices. They exert a significant influence on the index quality and reliability. The ECB therefore considers that delegated acts are not the appropriate legal instruments to be used to establish rules governing these key elements of the HICP framework. These issues should be decided and laid down in the proposed regulation. The ECB suggests incorporating in Article 5(6) and (7) the well established thresholds of 1/1 000 weight of the total expenditure covered by the HICP, and 1/100 for owner-occupied housing and house price indices, respectively.
- 3.2. The ECB supports the proposed Article 5(1) in connection with Article 2(q) on the collection of information about 'administered prices' as part of the 'basic information' that should be provided with reference to HICPs (and HICPs at constant tax rates). The ECB monitors price developments that are either set directly, or influenced to a significant extent, by the government (at central, regional or local level, including national regulators), as well as the impact of these developments on the overall HICP. Indeed, this information is very useful for the analysis of inflation developments. However, further guidance is necessary with regard to the classification of prices as either not, mainly or fully administered. This classification is often ambiguous. For indices that refer to, or exclude administered prices, the ECB would welcome if the Commission would provide guidance ensuring the harmonised definition and application of these concepts in an implementing act adopted under Article 4(4) of the proposed regulation.

4. Methodological issues

- 4.1. The ECB agrees with the Commission that the new legal framework should not fall behind the current requirements for compiling harmonised indices in terms of quality and consistency assurance. The achievements reached in the past 20 years since the adoption of Regulation (EC) No 2494/95 should be maintained and, where possible, enhanced.
- 4.2. Article 4(2)(b) of the proposed regulation introduces a wider margin for systematic differences in annual growth rates of the owner-occupied housing price index (OOH-price index) and of the house price index (HPI) that may result from deviations from the concepts or methods laid down in the proposed Regulation. While Commission Regulation (EU) No 93/2013 ⁽⁵⁾ is silent on this issue, the ECB strongly suggests applying the standard of

⁽¹⁾ See, e.g., para. 1.3 of the Opinion of the European Central Bank of 15 February 2007 at the request of the Council of the European Union on eight proposals amending Directives 2006/49/EC, 2006/48/EC, 2005/60/EC, 2004/109/EC, 2004/39/EC, 2003/71/EC, 2003/6/EC and 2002/87/EC, as regards the implementing powers conferred on the Commission (CON/2007/4), (2007/C 39/01) (OJ C 39, 23.2.2007, p. 1); para. 2 of the Opinion of the European Central Bank of 19 October 2012 on a proposal for a Commission regulation amending Regulation (EC) No 2214/96 concerning harmonised indices of consumer prices (HICP): transmission and dissemination of sub-indices of the HICP, as regards establishing harmonised indices of consumer prices at constant tax rates and on a proposal for a Commission regulation laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices, as regards establishing owner-occupied housing price indices (CON/2012/77) (2013/C 73/03) (OJ C 73, 13.3.2013, p. 5).

⁽²⁾ Judgment of 10 July 2003 in Case C-11/00 *Commission of the European Communities v European Central Bank* [2003] ECR 2003, I-7147, in particular paragraphs 110 and 111. The Court of Justice clarified that the obligation to consult the ECB is intended 'essentially to ensure that the legislature adopts the act only when the body has been heard, which, by virtue of the specific functions that it exercises in the Community framework in the area concerned and by virtue of the high degree of expertise that it enjoys, is particularly well placed to play a useful role in the legislative process envisaged'.

⁽³⁾ See Article 5(3) of Regulation (EC) No 2494/95.

⁽⁴⁾ See Article 5(6) and (7) of the proposed regulation.

⁽⁵⁾ Commission Regulation (EU) No 93/2013 of 1 February 2013 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices, as regards establishing owner-occupied housing price indices (OJ L 33, 2.2.2013, p. 14).

0,1 percentage points that is used for assessing the comparability of sub-indices of the HICP. This could be achieved by dropping Article 4(2)(b) of the proposed Regulation and removing the restriction in the coverage of Article 4(2)(a). Relaxing comparability requirements would deteriorate the quality of the OOH and HPI sub-indices.

- 4.3. The production of sub-indices at intervals less frequent than required by the proposed regulation should remain subject to prior approval by the Commission (Eurostat). This is currently ensured by Article 8(2) of Council Regulation (EC) No 2494/95 ⁽¹⁾. The same requirement should be reflected in Article 6(3) of the proposed regulation, as well as in the implementing regulation.

Where the ECB recommends that the proposed regulation be amended, specific drafting proposals are set out in a technical working document accompanied by explanatory text to this effect.

Done at Frankfurt am Main, 13 March 2015.

The President of the ECB

Mario DRAGHI

⁽¹⁾ The required frequency of price collection shall be once a month. Where less frequent collection does not preclude production of an HICP which meets the comparability requirements referred to in Article 4, the Commission (Eurostat) may allow exceptions to monthly collection. This paragraph shall not preclude more frequent price collection.

IV

*(Notices)*NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND
AGENCIES

COUNCIL

**Notice for the attention of persons and entities subject to the restrictive measures provided for in
Council Decision 2013/255/CFSP and in Council Regulation (EU) No 36/2012 concerning restrictive
measures in view of the situation in Syria**

(2015/C 175/03)

The following information is brought to the attention of the persons and entities designated in Annex I to Council Decision 2013/255/CFSP, as amended by Council Decision (CFSP) 2015/837 ⁽¹⁾, and in Annex II to Council Regulation (EU) No 36/2012, as implemented by Council Implementing Regulation (EU) 2015/828 ⁽²⁾, concerning restrictive measures in view of the situation in Syria.

The Council of the European Union, after having reviewed the list of persons and entities designated in the above-mentioned Annexes, has determined that the restrictive measures provided for in Decision 2013/255/CFSP and in Regulation (EU) No 36/2012 should continue to apply to those persons and entities.

The attention of the persons and entities concerned is drawn to the possibility of making an application to the competent authorities of the relevant Member State(s) as indicated on the websites in Annex IIa to Regulation (EU) No 36/2012, in order to obtain an authorisation to use frozen funds for basic needs or specific payments (cf. Article 16 of the Regulation).

The persons and entities concerned may submit a request to the Council before 1 March 2016, together with supporting documentation that the decision to include them on the above-mentioned list should be reconsidered to the following address:

Council of the European Union
General Secretariat
DG C 1C
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

E-mail: sanctions@consilium.europa.eu

Any observations received will be taken into account for the purpose of the Council's next review, pursuant to Article 34 of Decision 2013/255/CFSP and Article 32(4) of Regulation (EU) No 36/2012, of the list of designated persons and entities.

⁽¹⁾ OJ L 132, 29.5.2015, p. 82.

⁽²⁾ OJ L 132, 29.5.2015, p. 3.

Notice for the attention of the data subjects to whom the restrictive measures provided for in Council Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria apply

(2015/C 175/04)

The attention of data subjects is drawn to the following information in accordance with Article 12 of Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾:

The legal basis for this processing operation is Council Regulation (EU) No 36/2012 ⁽²⁾.

The controller of this processing operation is the Council of the European Union represented by the Director-General of DG C (Foreign Affairs, Enlargement, Civil Protection) of the General Secretariat of the Council and the department entrusted with the processing operation is the Unit 1C of DG C that can be contacted at:

Council of the European Union
General Secretariat
DG C 1C
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË

E-mail: sanctions@consilium.europa.eu

The purpose of the processing operation is the establishment and updating of the list of persons subject to restrictive measures in accordance with Regulation (EU) No 36/2012.

The data subjects are the natural persons who fulfil the listing criteria as laid down in that Regulation.

The personal data collected includes data necessary for the correct identification of the person concerned, the Statement of Reasons and any other data related thereto.

The personal data collected may be shared as necessary with the European External Action Service and the Commission.

Without prejudice to restrictions provided for in Article 20(1)(a) and (d) of Regulation (EC) No 45/2001, requests for access, as well as requests for rectification or objection will be answered in accordance with section 5 of Council Decision 2004/644/EC ⁽³⁾.

Personal data will be retained for 5 years from the moment the data subject has been removed from the list of persons subject to the asset freeze or the validity of the measure has expired, or for the duration of court proceedings in the event they had been started.

Data subjects may have recourse to the European Data Protection Supervisor in accordance with Regulation (EC) No 45/2001.

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ L 16, 19.1.2012, p. 1.

⁽³⁾ OJ L 296, 21.9.2004, p. 16.

EUROPEAN COMMISSION

Euro exchange rates ⁽¹⁾

28 May 2015

(2015/C 175/05)

1 euro =

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	1,0896	CAD	Canadian dollar	1,3594
JPY	Japanese yen	135,36	HKD	Hong Kong dollar	8,4484
DKK	Danish krone	7,4598	NZD	New Zealand dollar	1,5213
GBP	Pound sterling	0,71240	SGD	Singapore dollar	1,4723
SEK	Swedish krona	9,2617	KRW	South Korean won	1 208,30
CHF	Swiss franc	1,0344	ZAR	South African rand	13,2001
ISK	Iceland króna		CNY	Chinese yuan renminbi	6,7568
NOK	Norwegian krone	8,4910	HRK	Croatian kuna	7,5817
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	14 380,97
CZK	Czech koruna	27,463	MYR	Malaysian ringgit	3,9797
HUF	Hungarian forint	308,65	PHP	Philippine peso	48,560
PLN	Polish zloty	4,1289	RUB	Russian rouble	57,1277
RON	Romanian leu	4,4435	THB	Thai baht	36,909
TRY	Turkish lira	2,8970	BRL	Brazilian real	3,4373
AUD	Australian dollar	1,4267	MXN	Mexican peso	16,7079
			INR	Indian rupee	69,5410

⁽¹⁾ Source: reference exchange rate published by the ECB.

Opinion on the Advisory Committee on mergers at its meeting on 9 February 2015 concerning a draft decision relating to Case M.7194 — Liberty Global/W&W/Corelio/De Vijver Media

Rapporteur: Denmark

(2015/C 175/06)

Concentration

1. The Advisory Committee agrees with the Commission that the notified operation constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
2. The Advisory Committee agrees with the Commission that the notified operation has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

Relevant Markets

3. The Advisory Committee agrees with the Commission's definitions of the relevant product and geographic markets in the draft Decision.
4. In particular, the Advisory Committee agrees with the Commission that, for the purpose of assessing the proposed concentration, the following markets should be distinguished:
 - (a) The Belgian or a narrower (regional) market for the production of TV content and the Belgian or a narrower (regional) market for the licensing of broadcasting rights for TV content;
 - (b) The market for the wholesale supply of FTA/basic pay TV channels within the footprint of Telenet's cable network and the market for the wholesale supply of premium pay TV channels within the footprint of Telenet's cable network;
 - (c) The market for the retail provision of TV services within the footprint of Telenet's cable network;
 - (d) The Belgian or a narrower (regional) market for the sale of advertising space (on TV channels).

Competitive Assessment

5. The Advisory Committee agrees with the Commission that the proposed concentration raises concerns as to its compatibility with the internal market or a substantial part thereof:
 - (a) with respect to the vertical relationship between the market for the wholesale supply of FTA/basic pay TV channels within the footprint of Telenet's cable network on the one hand, and the downstream market for the retail provision of TV services to end users within the footprint of Telenet's cable network, on the other hand, in terms of:
 - (i) input foreclosure;
 - (ii) customer foreclosure.

Remedy

6. The Advisory Committee agrees with the Commission that, also in light of the developments after notification summarised in section 6 of the draft decision, the commitments are sufficient to remove the concerns raised by the proposed concentration as to its compatibility with the internal market or a substantial part thereof:
 - (a) with respect to the vertical relationship between the market for the wholesale supply of FTA/basic pay TV channels within the footprint of Telenet's cable network on the one hand, and the downstream market for the retail provision of TV services to end users within the footprint of Telenet's cable network, on the other hand, in terms of:
 - (i) input foreclosure;
 - (ii) customer foreclosure.

A minority of the Advisory Committee abstains.

7. The Advisory Committee agrees with the Commission that, subject to full compliance with the commitments offered by the parties, and all commitments considered together, the proposed concentration is unlikely to significantly impede effective competition in the internal market or in a substantial part thereof. A minority of the Advisory Committee abstains.
 8. The Advisory Committee agrees with the Commission's view that the proposed concentration should be declared compatible with the internal market and the EEA Agreement in accordance with Articles 2(2) and 8(2) of the Merger Regulation. A minority of the Advisory Committee abstains.
-

Final Report of the Hearing Officer ⁽¹⁾
Liberty Global/Corelio/W&W/De Vijver Media
(M.7194)
(2015/C 175/07)

1. On 18 August 2014, the European Commission (the 'Commission') received a notification of a proposed concentration by which Liberty Global plc ('Liberty Global'), Corelio Publishing NV ('Corelio') and Waterman & Waterman NV ('W&W') (together the 'Notifying Parties') will acquire joint control over De Vijver Media NV ('De Vijver Media') within the meaning of Article 3(1)(b) of the Merger Regulation ⁽²⁾ by way of purchase of shares ('the Proposed Transaction').
2. The Proposed Transaction has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.
3. On 22 September 2014 the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation. The Commission preliminarily concluded that the Proposed Transaction raised serious doubts as to its compatibility with the internal market and the functioning of the EEA Agreement as a result of its non-coordinated vertical effects. The Notifying Parties submitted written comments on 6 October 2014.
4. On 16 October 2014, pursuant to Article 10(3) of the Merger Regulation, the Commission decided to extend the time limit to review the Proposed Transaction by 20 working days.
5. Belgacom NV demonstrated a 'sufficient interest' within the meaning of Article 18(4) of the Merger Regulation and on 9 December 2014 it was recognized as interested third person pursuant to Article 5 of Decision 2011/695/EU.
6. In order to address the competition concerns identified by the Commission, the Notifying Parties submitted formal commitments on 24 November 2014. The Commission launched a market test on the commitments and concluded that improvements were needed to remove the competitive concerns. The Notifying Parties submitted improved commitments on 9 December 2014 and on 12 December 2014 and a final set of commitments on 9 February 2015. The main element of the final commitments is the commitment to offer TV distributors access to De Vijver Media's linear basic pay TV channels Vier and Vijf and any other linear basic pay TV channel, together with their ancillary rights, on fair, reasonable and non-discriminatory terms, for their distribution in Belgium.
7. On the basis of the revised final commitments, the draft decision declares the Proposed Transaction compatible with the internal market and the EEA Agreement.
8. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views. I conclude that it does.
9. I have not received any other procedural request or complaint from any party. Overall, I conclude that all parties have been able to effectively exercise their procedural rights in this case.

Brussels, 12 February 2015.

Joos STRAGIER

⁽¹⁾ Pursuant to Articles 16 and 17 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ L 275, 20.10.2011, p. 29) ('Decision 2011/695/EU').

⁽²⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1) (the 'Merger Regulation').

Summary of Commission Decision
of 24 February 2015
declaring a concentration compatible with the internal market and the EEA Agreement
(Case M.7194 — Liberty Global/Corelio/W&W/De Vijver Media)
(notified under document C(2015) 996)
(only the English version is authentic)
(Text with EEA relevance)
(2015/C 175/08)

On 24 February 2015 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings⁽¹⁾, and in particular Article 8(2) of that Regulation. A non-confidential version of the full Decision, as the case may be in the form of a provisional version, can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html

I. THE PARTIES

- (1) Liberty Global plc ('Liberty Global') provides TV, internet and telephony services via its cable networks in several countries in Europe. In Belgium, Liberty Global is the controlling shareholder of Telenet. Telenet owns and operates a cable network. The network covers virtually all of Flanders, parts of Brussels and one municipality in Wallonia. Telenet also operates a number of pay TV channels and video-on-demand services.
- (2) Waterman & Waterman NV ('Waterman & Waterman') is a financial holding company controlled by two individuals, namely Wouter Vandenhoute and Erik Watté.
- (3) Corelio Publishing NV ('Corelio Publishing') publishes newspapers, online news and sells advertising space.
- (4) De Vijver Media NV ('De Vijver Media') broadcasts two Dutch-language TV channels, namely 'Vier' and 'Vijf'. It also produces TV content, mostly through its subsidiary Woestijnvis NV. Moreover, De Vijver Media sells advertising space on its channels Vier and Vijf and on some smaller TV channels owned by other broadcasters.

II. THE OPERATION

- (5) On 18 August 2014 the Commission received a notification of a proposed concentration pursuant to Article 4 of the Merger Regulation, by which the undertaking Liberty Global, along with the undertakings Waterman & Waterman and Corelio Publishing, acquire within the meaning of Article 3(1)(b) of the Merger Regulation joint control of the undertaking De Vijver Media by way of purchase of shares.
- (6) On 17 June 2014 Telenet, W&W and Corelio entered into an agreement pursuant to which Telenet will acquire 33,33 % of the shares of De Vijver Media and also subscribe to a capital increase of De Vijver Media. As a result, Telenet will hold 50 % of the shares of De Vijver Media while Waterman & Waterman and Corelio Publishing will each hold 25 % of the shares. The three shareholders of De Vijver Media will enter into a shareholders' agreement upon closing of the transaction. Based on their shareholdings and the provisions of the shareholders' agreement, each of the three shareholders will have joint control over De Vijver Media.

III. THE RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

- (7) TV broadcasters such as De Vijver Media supply TV channels to TV distributors such as Telenet. The Commission defined the relevant product market on which De Vijver Media operates as the market for the wholesale supply of free-to-air and basic pay TV channels. Basic pay TV channels are channels included in the basic channel package offered by TV distributors. In Belgium, most households pay a monthly fee to a cable company or telephone company in return for such a basic package of TV channels. De Vijver Media's channels Vier and Vijf are included in this basic package and are therefore basic pay TV channels. Only the channels of the public broadcasters are available for free, without any subscription, and therefore qualify as free-to-air channels. Given the limited number of consumers relying solely on free-to-air TV services, the Commission did not need to decide whether the wholesale supply of free-to-air channels and the wholesale supply of basic pay TV channels constitute separate markets, since this would not change the outcome of the competitive assessment. The relevant geographic market for the supply of free-to-air and basic pay TV channels is the footprint of Telenet.

⁽¹⁾ OJ L 24, 29.1.2004, p. 1.

- (8) TV distributors such as Telenet transmit TV channels to their subscribers over a network. The Commission defined the relevant product market on which Telenet is active as TV distributor as the market for the retail provision of TV services. It left open whether this market consists of two separate relevant product markets, namely the market for the retail provision of free-to-air and basic pay TV services and the market for the retail provision of premium pay TV services. The relevant geographic market of these retail markets is the footprint of Telenet.
- (9) The Commission also defined a market for the production of TV content and a market for the licensing/acquisition of broadcasting rights for TV content. It left open whether the relevant geographic scope of these markets is national (Belgium) or narrower (Flanders).
- (10) Finally, the Commission left open whether the market for TV advertising constitutes a distinct market from other forms of advertising. If such a distinct market exists, its geographic scope would be Belgium or narrower (Flanders).

IV. COMPETITIVE ASSESSMENT

- (11) The transaction does not raise competition concerns regarding the market for the production of TV content and the market for the licensing of broadcasting rights for TV content. De Vijver Media's market share on these markets is low and the content it produces through its subsidiary Woestijnvis NV is not essential for TV broadcasters or TV distributors to compete. The transaction also does not raise competition concerns regarding a possible separate market for TV advertising.
- (12) The transaction does raise competition concerns because De Vijver Media could foreclose TV distributors that compete with Telenet from the channels Vier and Vijf (input foreclosure). The transaction also raises competition concerns because Telenet could foreclose competitors of De Vijver Media from access to Telenet's cable network.
 1. **Input foreclosure: De Vijver Media could withhold its channels from TV distributors that compete with Telenet**
- (13) The channels Vier and Vijf are an important input for TV distributors. Consumers in Flanders and Brussels value Vier and Vijf and frequently watch these channels. Respondents to the market investigation affirmed that TV distributors must be able to offer these channels to their subscribers in order to compete with Telenet.
- (14) Both Telenet and De Vijver Media have the ability to engage in both total and partial input foreclosure. Total input foreclosure means Telenet and De Vijver Media could refuse to license the channels Vier and Vijf to TV distributors that compete with Telenet. Partial input foreclosure means Telenet and De Vijver Media could raise the price for the channels Vier and Vijf or discriminate against competing TV distributors in other ways.
- (15) Apart from Telenet, two other shareholders will have joint control over De Vijver Media after the transaction. The Commission assessed whether those two other shareholders could prevent Telenet from engaging in input foreclosure. Based on an analysis of the shareholders agreement, the Commission concluded that this was not the case and that Telenet would, on its own, have the ability to engage in input foreclosure.
- (16) If the three shareholders of De Vijver Media act together, De Vijver Media also has the ability to engage in input foreclosure. Whether all three shareholders of De Vijver Media would act together depends on whether all three of them would have the incentive to engage in input foreclosure. The other two shareholders of De Vijver Media will have an incentive to engage in partial input foreclosure, as this will result in De Vijver Media receiving higher licence fees (the fees paid by TV distributors to TV broadcasters for the right to transmit the channels). The two other shareholders may not have the incentive to engage in total input foreclosure, but Telenet may align their incentives with those of Telenet by compensating them for any loss in revenue that may result from total input foreclosure.
- (17) To assess whether De Vijver Media would have the incentive to engage in total input foreclosure, the Commission quantified the costs and benefits that such foreclosure would entail. The costs are the advertising revenues and licence fees that De Vijver Media would forego because its channels are no longer offered by TV distributors that compete with Telenet. The benefits are the profits generated by Telenet from the subscribers that switch from competing platforms to Telenet. Based on a comparison of the costs and benefits, the Commission then calculated how many of the subscribers of Telenet's competitors would have to switch for total input foreclosure to be profitable.

- (18) The Commission estimated that, if Vier and Vijf were no longer offered by Telenet's competitors, the number of subscribers that would switch would be significantly higher than the minimum number of subscribers needed to make total foreclosure profitable. Since the benefits of total input foreclosure outweigh the costs, Telenet and De Vijver Media would have a strong incentive to engage in total input foreclosure.
- (19) Telenet and De Vijver Media would also have a strong incentive to engage in partial input foreclosure, as this would result in De Vijver Media receiving higher licence fees.
- (20) Input foreclosure would lead to anticompetitive effects in the market for the retail provision of TV services. Telenet has a dominant position on that market, based on its high market shares and several other factors. Input foreclosure would raise barriers to entry into this market, since new entrants will have difficulty competing with Telenet if they cannot offer the channels Vier and Vijf. Hence, Telenet's dominant position would be strengthened. Input foreclosure would also weaken competition from existing TV distributors, as they will not be able to offer Vier and Vijf.

2. Customer foreclosure: Telenet could disadvantage broadcasters that compete with De Vijver Media on its cable network

- (21) In television markets, complete customer foreclosure occurs if a TV broadcaster is denied access to a distributor downstream. This results in blackouts during which subscribers are not able to watch the foreclosed channels. A more subtle form of foreclosure, partial customer foreclosure, occurs if a TV distributor allows a channel on its platform but degrades the quality of the viewing experience of the channel. In particular, a distributor could make rival's content less easily accessible on its platform, e.g. by positioning rival channels lower in the channel list or electronic programming guide, which will increase the likelihood that viewers will instead watch channels belonging to the distributor.
- (22) Telenet is an important customer with a significant degree of market power in the downstream market for the retail provision of TV services. In light of Telenet's high market share on the market for the retail provision of TV services, the Commission considers that broadcasters have to be on Telenet's TV distribution platform to be able to operate in Flanders.
- (23) Telenet has control over the linear channels it carries (subject to must-carry obligations) and can also decide which non-linear content broadcasters can make available on its platform. Telenet therefore has the ability to engage in customer foreclosure.
- (24) Telenet is also likely to have the incentive to engage in customer foreclosure. The target of such a strategy would be the channels that compete closely with the channels of De Vijver Media, that is, channels with similar audience and advertisers. This is because De Vijver Media's gains from customer foreclosure come from increased advertising revenues and these are likely greater in case a channel similar to Vier or Vijf would no longer be available on Telenet's platform. Conversely, foreclosure of a channel with a different profile and audience than that of Vier and Vijf is unlikely to generate any significant revenues. Due to the similarities in audience and type of content, the Commission considers that the likely targets of customer foreclosure are Medialaan's channels 2BE and Vitaya, VRT's channel Canvas, and the non-linear services of these two broadcasters.
- (25) The overall profitability of customer foreclosure for Telenet and De Vijver Media depends on how many customers switch away from Telenet as a result of foreclosure. If customer switching is low, Telenet would not lose many subscribers and hence the costs of customer foreclosure would be limited. Based on the Commission's estimate, customer switching would likely be too high to make total customer foreclosure (meaning the channel is not made available at all on Telenet's platform) profitable for Telenet. However, Telenet would likely have an incentive to engage in partial customer foreclosure in the form of quality degradation of rival broadcasters' channels and non-linear services relative to De Vijver Media. Telenet can also use partial customer foreclosure as a credible threat in negotiations, which will improve Telenet's bargaining position with Medialaan and VRT, and allow Telenet to drive a harder bargain during the negotiations about a carriage agreement.
- (26) Partial customer foreclosure would have anticompetitive effects. Quality degradation by Telenet will reduce the quality of the viewing experience of rival channels on Telenet's platform. Moreover, competition in the market for the wholesale supply of free-to-air and basic pay TV channels would be softened as the broadcasters Medialaan and VRT could be weakened as competitors.

3. Conclusion regarding the competitive assessment

- (27) The concentration gives rise to input foreclosure concerns regarding De Vijver Media's channels Vier and Vijf. It also gives rise to partial customer foreclosure concerns because Telenet has the ability and incentive to degrade the quality of the viewing experience of the channels of VRT and Medialaan. The notified concentration therefore gives rise to concerns that the transaction would lead to a significant impediment to effective competition in the market for the retail provision of TV services in Telenet's footprint and the market for the supply of free-to-air and basic pay TV channels in Telenet's footprint.

V. DEVELOPMENTS AFTER NOTIFICATION OF THE CONCENTRATION

- (28) While the Commission was reviewing the concentration, De Vijver Media entered into new carriage agreements with several TV distributors, including Belgacom. De Vijver Media also offered to extend the duration of several carriage agreements with other TV distributors. These carriage agreements reduce the risk of input foreclosure, as they guarantee that TV distributors will have access to the channels Vier and Vijf. They do not, however, entirely remove the Commission's input foreclosure concerns, since the agreements do not cover all rights linked to the broadcast of Vier and Vijf and since potential new entrants do not have a carriage agreement.
- (29) During the Commission's review, Telenet also proposed changes to its carriage agreements with the TV broadcasters VRT and Medialaan. These agreements set the conditions under which Telenet distributes the channels of VRT and Medialaan, including the fees that Telenet must pay. Telenet and VRT amended their carriage agreement and extended the duration of the agreement. The amendment introduced several provisions aimed at protecting VRT from customer foreclosure. Telenet also made a binding and irrevocable offer to Medialaan to extend the duration of its carriage agreement and to amend the agreement to protect Medialaan from customer foreclosure. The notifying parties have made a formal commitment to keep this offer open for six months after closing of the transaction.

VI. COMMITMENTS

1. Description of the commitments

- (30) In order to address the competition concerns identified by the Commission, the notifying parties submitted commitments. The central element of these commitments was the commitment to ensure that De Vijver Media will meet all reasonable requests from TV distributors to distribute the channels Vier, Vijf and any future basic pay TV channel on fair, reasonable and non-discriminatory terms. Any TV distributor who intends to offer retail TV services in Telenet's footprint can, if it so wishes, obtain a licence for the entire territory of Belgium. De Vijver Media must not only license the channels, but also ancillary rights. These are the rights to include the TV programmes from the channel in a service that is linked to the channel, such as catch-up TV, multi-screen services or PVR (a service allowing viewers to record and watch programmes when they want). Linked services are offered as part of the viewing experience of channels and are offered to end-users simultaneously or shortly before or after the linear transmission of the channel.
- (31) All providers of TV distribution services can rely on the commitments, regardless of whether they distribute TV channels via cable, satellite, IPTV, DTT, internet or another distribution platform. In case of disputes over the access conditions, the TV distributors can submit the dispute to fast-track arbitration. The commitments will be in place for seven years.
- (32) Apart from the commitment to license Vier and Vijf, the notifying parties also commit to keep the offer to Medialaan open for six months after closing. The context of this offer was described in the section entitled 'Developments after notification of the concentration'.

2. Assessment of the commitments

- (33) The Commission considers that the commitment to license Vier, Vijf and any other basic pay TV channel, together with their ancillary rights, in combination with the carriage agreements that De Vijver Media has concluded, remove the Commission's input foreclosure concerns. It removes the Commission's total input foreclosure concern because it ensures that current and future TV distributors can include Vier and Vijf in their offer. It also removes the Commission's partial input foreclosure concerns because it ensures that TV distributors will pay fees that are fair, reasonable and non-discriminatory.
- (34) The Commission also considers that the commitments, in combination with the carriage agreements that Telenet has concluded, remove the Commission's customer foreclosure concerns. Telenet's carriage agreements with VRT and Medialaan, and Telenet's offer to amend the agreement with Medialaan as formalised in the commitments, protect VRT and Medialaan from partial customer foreclosure.

VII. CONCLUSION

- (35) For the reasons mentioned above, the decision concluded that the proposed concentration will not significantly impede effective competition in the internal market or in a substantial part of it.
- (36) Consequently the concentration was declared compatible with the internal market and the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
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