Case number SA.62830

30 September 2021

European Commission, Competition DG

Subject

Second Reply of the Finnish competent authorities to the Commission’s request for information of 30 April 2021, SA.62830 – State aid to public service broadcaster YLE for VOD and online learning services – FI
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1. Introduction

1. On 23 April 2021, Sanoma Media Finland Oy (Sanoma or Complainant) submitted a complaint (Complaint) to the European Commission (Commission) in which it alleges that Yleisradio Oy (Yle) has received an unlawful State aid in relation to VOD\textsuperscript{1} and online learning services.

2. This letter constitutes the second response of the Finnish competent authorities to the Commission’s letter of 30 April 2021, SA 48486 – State aid to public service broadcaster YLE for VOD and online learning services – FI. As indicated in the reply of 21 June 2021 to the Commission (First Response), this response provides additional factual background and additional information in relation to the Complainant’s allegations that Yle’s VOD and online learning services constitute an illegal State aid that distorts competition on the market.

3. Sanoma has raised a number of claims in relation to the alleged disproportionate impact of Yle VOD and online learning services on the market. This Second Response to the Complaint includes an economic assessment of Sanoma’s claims prepared by an economic consultancy Copenhagen Economics (CE Report), which is attached under a separate cover. The CE Report, its assessment and conclusions, constitute an integral part of this response. The CE Report, contrary to the Complaint allegations, is based on empirical evidence, including a viewer survey conducted between 27 July and 5 August 2021 on a sample of 1,119 respondents, representative for the Finnish population. The CE Report concludes that Complainant’s allegations are not supported by evidence and that: (i) Sanoma overestimates the magnitude of alleged aid received by Yle; (ii) Sanoma substantially overestimates effects of Yle Arena; (iii) the alleged effects on the content markets are unfounded; and (iv) Yle’s online learning service only narrowly overlaps with that of commercial providers.

4. This response includes Yle’s business secret or otherwise confidential information. A non-confidential version of the response is provided under a separate cover.

5. The legal test for whether a public service broadcaster’s activities have adverse effects on the market contrary to the EU State aid rules is very high as such effects must be “manifestly disproportionate” to the objectives pursued. As the EU courts held, such manifestly disproportionate effects must make it “impossible or excessively difficult” for private operators to conduct their business.\textsuperscript{2} The Complaint does not support any findings of such

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\textsuperscript{1} The Complaint concerns both VOD and catch-up services, though focuses on VOD services, i.e. the catalogue of content offered through Yle Arena. The Complainant defines catch-up services as services that allow viewers to watch content already broadcast on TV channels made available for a limited duration, such as 7 days after broadcast. According to the Complainant’s definition, catch-up services do not include content that has not already been broadcasted on TV nor catalogue offer available for an unlimited time. According to the Complaint, such catalogue content is offered by VOD providers, i.e. commercial operators that offer audio-visual content on demand. The Complainant admits that the provision of catch-up services falls undisputedly within the definition of Yle’s public service remit (Complaint, Annex 5, paragraph 85).

disproportionate effects and its analysis lacks economic foundation. Yle’s activities in relation to VOD and online learning services also have positive effects as they help to develop those markets and customers’ ability to consider also commercial offers.

6. As explained in the First Response, the EU State aid rules and the Amsterdam protocol recognize the need for public service broadcasting which should be allowed through new technologies in order to reach citizens and fulfil “the democratic, social and cultural needs of each society”. Yle’s activities and financing does not include any illegal State aid as they comply with the above legal principles and they do not cause any disproportionate effects on the market.

2. The Complaint focuses on selected aspects of Yle Areena and does not recognize sufficiently market developments

2.1 Developments in the audiovisual market – transition from linear to non-linear content

7. As explained in section 4.4.3 of the First Response, the audiovisual services market is rapidly changing with the changes being driven by the technological development, which provides viewers with new opportunities and ways to view audiovisual content. Further to the changing consumers preferences the traditional boundaries between various market segments are becoming more blurred or even disappear, especially from the customers’ point of view.

8. The traditional boundaries between different market segments cease to be relevant as there is no single way of consuming audiovisual services. Therefore, the Complaint correctly recognizes that there is a single market that comprises all audiovisual services (including traditional free and paid broadcasting, and various VOD services). However, the Complaint does not fully recognize the relevant market development and focuses solely on the selective elements of the VOD segment.

9. It has been already recognized that there is a very wide competition for audiences “among a crowded field of streaming video providers, but also with other forms of entertainment. People are enjoying more paid and free options for streaming video and music services; video gaming is growing across generations; and more people are turning to social media for entertainment and news”.

10. Therefore, the younger generations (Generation Z born 1997-2007) may be the source of next disruptions in the audiovisual market and for the younger audiences the role of

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3 The Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts was signed in Amsterdam on 2 October 1997. Annexed to the Treaty is the Protocol on the System of Public Broadcasting in the Member States (Amsterdam Protocol). The public service broadcasting needs to benefit from the technological progress in order to reach wide audiences was also recognised by the EU Council in Council Resolution of 1999 concerning public service broadcasting (1999/C 30/01).

traditional TV services is rapidly declining. As young audiences lead the major market developments and already clearly observable trends, they are followed by other groups of viewers, who all gradually shift to the new ways of consuming media content.

11. **Chart 1** – Generation Z may not be “video first”

![Generation Z may not be “video first”](image)

**FIGURE 2**

**Generation Z may not be “video first”**

Respondents across generations ranked their favorite entertainment activity

<table>
<thead>
<tr>
<th>Activity</th>
<th>Generation Z</th>
<th>Millennials</th>
<th>Generation X</th>
<th>Boomers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Play video games</td>
<td>26%</td>
<td>16%</td>
<td>14%</td>
<td>13%</td>
</tr>
<tr>
<td>Listen to music</td>
<td>10%</td>
<td>13%</td>
<td>11%</td>
<td>8%</td>
</tr>
<tr>
<td>Browse the internet</td>
<td>14%</td>
<td>11%</td>
<td>12%</td>
<td>10%</td>
</tr>
<tr>
<td>Engage on social platforms</td>
<td>10%</td>
<td>11%</td>
<td>5%</td>
<td>2%</td>
</tr>
<tr>
<td>Watch TV shows or movies at home</td>
<td>18%</td>
<td>10%</td>
<td></td>
<td>39%</td>
</tr>
</tbody>
</table>


12. The general transition from linear to non-linear content patterns of consumption is also very visible in Finland, where younger audiences are increasingly relying on VOD services but also increasingly across audiences of all age groups. This is also supported by the CE Report.\(^5\)

13. **Table 1** – Consumption of online TV services, VOD services and video services 2020 in Finland, by percentage of the population (during the last three months)

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\(^5\) See paragraph 4.8-4.9.
<table>
<thead>
<tr>
<th>Age Group</th>
<th>Online TV services by TV companies</th>
<th>VOD services</th>
<th>Online video services</th>
</tr>
</thead>
<tbody>
<tr>
<td>16-24 year olds</td>
<td>81</td>
<td>84</td>
<td>97</td>
</tr>
<tr>
<td>25-34</td>
<td>84</td>
<td>83</td>
<td>95</td>
</tr>
<tr>
<td>35-44</td>
<td>88</td>
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<td>65-74</td>
<td>62</td>
<td>13</td>
<td>42</td>
</tr>
<tr>
<td>75-89</td>
<td>32</td>
<td>3</td>
<td>14</td>
</tr>
</tbody>
</table>

Source: Statistics Finland’s 2020 survey on use of information and communications technology by individuals, published on 10 November 2020. An extract of Annex table 27.\(^6\)

14. In addition, it has become evident that consuming video content through linear TV and consuming video content through video streaming services are not considered as equal by the increasing number of viewers, especially among the youngest audiences. At the same time viewers express a clear preference for using video streaming services at the time chosen by them, as they do not want to be bound to the TV broadcasting schedule.

15. **Chart 2: Viewers’ preferences in relation to watching content/programs**

![Chart](image)

Source: Suoratoistopalvelut - DNA - Tiivistelmä 2021, Bilendi Oy\(^7\).

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\(^7\) [a737c701-774b-4a62-9e07-f7e292e3a887.pdf](https://www.stat.fi/til/suuri/2020/suuri_2020_2020-11-10_tau_027 fi.html), Translated from the original Finnish language. According to the information available on the survey data collection for the study was carried out as an online survey in the M3 Panel maintained by Bilendi Oy April 9-13, 2021. The target group was Finns between the ages of 18 and 75, and the sample of the study was quota nationally representative by gender, age and area of residence. A total of 1000 research interviews were conducted. Of all respondents, 88 per cent use streaming services (N=875).
16. Further, the subscription VOD (SVOD) continues to grow in the overall viewing time as can be seen in pan-European trend described in Chart 3 below. Yle Areena provides video on demand services for free and content provided in Yle Areena mostly concerns the same content that is also broadcasted in traditional TV (catch-up TV).

17. **Chart 3 – Video consumption time**

**Daily viewing time spent for non-linear video**

*In hours and minutes*

![Chart](image)

Source: Ampere – 9 Countries: Denmark, France, Germany, Italy, Netherlands, Poland, Spain, Sweden, UK. EBU Digital Media Consumption Trends July 2021.

18. In addition, the use of smart devices that allow for viewing on-demand content is gradually growing as viewers want to view content on devices of their own choice.
20. The composition of specific services used by viewers changes and it reflects observable market developments and an increasing shift from linear to non-linear media content. The trend is driven by the younger audience (first adopters), which is inevitably followed by more mature age groups.

21. **Chart 5** – Viewing time of linear vs non-linear content via TV device (concerning all TV channels and other use in Finland)
Use of TV (Big) Screen – Linear vs. Other use

ATV - Average Time Viewed (min/day), including both viewers and non-viewers, *please note the scales*

![Graph showing use of TV (Big) Screen – Linear vs. Other use for different age groups.]*

*Source: Television Audience Measurement, Finpanel 2012-2013, Avr Year 2011 as of 09-09-2011
‘Linear’ includes all the broadcast TV channels available for viewing in Finland and measured by Finpanel
‘Other use’ includes e.g. use of streaming services, game consoles, physical recordings etc. via Big Screen*

22. While both linear and non-linear content offerings continue to coexist, the importance of VOD services can be expected to further grow in all population groups. Further to the accelerating market developments, in order to fulfill its mission and its obligation to provide a universal service for all Finns, Yle has to use both linear and non-linear services in order to reach all viewers and provide value to all members of the Finnish society. Yle cannot under its statutory obligations serve only those viewers, who still consume more linear TV and have not yet shifted from the traditional broadcasting to non-linear services. Further to the principle of technological neutrality, neither linear nor non-linear services should be considered as of primary or secondary importance.

23. Therefore, the Complainant’s claim that Yle Areena should only include content which has been previously broadcast on the TV cannot be accepted as it does not reflect market development and the ways in which viewers consume media content in converged markets. From the perspective of viewers, it is not relevant whether the on-demand video content has been broadcasted earlier on any linear channel. Both ways of reaching viewers are independent to the viewers (which increasingly rely only on one of those options). As linear and non-linear channels are increasingly independent from the viewers’ perspective, there is no justification, under the current status of the market, for the requirement that Yle Areena could only include content that has been previously broadcasted on the traditional TV.

2.2 Viewers use several VOD services simultaneously

24. Further to the market developments described above, viewers not only increasingly use non-linear services, but also rely on several providers of such services at the same time. The
Complainant’s claims that Yle Areena leads to a disruption of competition are based on an assumption that viewers who use Yle Areena would not use, or use substantially less, commercial services.

25. The market reality shows, however, that viewers do not select one service provider, but often use several streaming services at the same time. This is true especially in relation to Finland as Finns use an increasing number of TV and video services. Based on a survey made in 2019, on average, Finns use 3.7 different TV and video services.³⁸

26. **Chart 6 – Use of TV and video services**

   Already half of the population are consuming four or more TV and video services

   ![Chart showing usage of TV and video services]

   Source: Nelonen Media: TV - Nyt ja tulevaisuudessa 2019 / Kantar TNS Oy. Translated from the original Finnish language.⁹

27. A strong competition between various market players in the VOD segment is reflected by the fact that viewers can easily switch between providers e.g. after one or two months of using a service. Active switching between services may depend on the single piece of content, but in general viewers consider all the content available in the provider’s catalogue and the overall user’s experience. Providers that have an attractive catalogue and provide

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viewers with exceptional and personalized experience are generally more likely to be able to keep viewers. In addition, switching costs are very low and viewers can easily terminate one service and almost immediately switch to another provider or start using new service.

28. Such active switching, in addition to the fact that viewers often use more than one streaming service, reflects the fact that the audiovisual services market and the VOD segment especially can be characterized by a robust competition.

2.3 The viewers willingness to pay for audio visual services

29. The presence of Yle Areena does not have any strong impact on the viewers willingness to pay for commercial VOD services in the similar way as the presence of traditional Yle’s TV broadcasting did not limit the commercial players ability to offer their pay-TV services.

30. The customers are often paying for various different audio-visual services, even for five or six services at the same time. In that context, Yle Areena, which has been present on the audiovisual market for many years, did not have and does not have a significant impact on the commercial operators. The Complaint has not established that free Yle’s services limit the amount of VOD subscriptions or viewers. For example, the success of Netflix or of the recent market entrant Disney Plus shows, among others, that Yle’s VOD services do not constitute a barrier for a successful VOD services and that viewers are willing to consider commercial VOD services, if they offer an attractive overall content and personalized viewer’s experience.

31. Recent survey showed that Finns are willing to pay about EUR 11 to 14 (EUR 11.25 on average) per month for one streaming service, which is a higher amount that the price for certain VOD services (e.g. Disney Plus costs EUR 6.99 and Ruutu Plus offered by Sanoma costs EUR 6.95 per month).10

2.4 Operators active in the VOD segment and the development of Yle Areena

32. Yle Areena is not a new service developed in the recent years. Following the market development and changing viewers expectations (driven by the technology development) Yle has constantly been trying to fulfill its public service mission by reaching all Finns with its media content.

33. In 2007 when Yle Areena was launched, only half of the Finns had tried watching video online. Yle Areena initially mostly just gathered all video content from different sites of yle.fi in one place. The majority of the programs included concerned news and current

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10 The survey was conducted in IROResearch Oy’s nationwide consumer panel, as part of the Thousand Finns -survey. The sample of the study was weighted according to age, gender, type of place of residence and province to correspond to the Finnish population nationwide. A total of 1,000 research interviews were conducted. The data collection period was 15–23 June 2021. The statistical margin of error in the study is a maximum of about ± 3.2 percentage points. The study was commissioned by MarketingNews (MarkkinointiUutiset)

<table>
<thead>
<tr>
<th>Ministry of Transport and Communications</th>
<th>Office</th>
<th>Postal address</th>
<th>Telephone</th>
<th><a href="http://www.lvm.fi">www.lvm.fi</a></th>
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<tbody>
<tr>
<td></td>
<td>Eteläesplanadi 16</td>
<td>PO Box 31</td>
<td>+358 265 10001</td>
<td><a href="mailto:firstname.lastname@lvm.fi">firstname.lastname@lvm.fi</a></td>
</tr>
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<td></td>
<td>FI-00100 Helsinki</td>
<td>FI-00023 Government</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Finland</td>
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</tbody>
</table>
affairs. The early programming profile skewed more towards the male audiences, but by early 2008, Yle Arcena already offered some programs in all the genres. Due to the digitalization and turning off the analogical TV services in 2006, the number of households without television increased. Especially younger audiences did not see the need to acquire a television or a digital equipment required to watch broadcasted content. Providing public service content online became necessary to guarantee equal accessibility to the Yle’s content for all required by the Yle Act. Sanoma incorrectly alleges that Yle’s strategy, or pattern of behaviour, is to identify successful services developed by private media companies, such as Sanoma, and to target specific customer groups by launching Yle’s services that compete with private actors. Yle is not targeting specific content or customer groups but pursuing a public service media strategy that enables it to reach all segments of the Finnish society.

34. It became apparent that streaming and VOD services are becoming an indispensable way to reach out audiences. This has been shown by Netflix and other commercial service providers already in 2012, when VOD services without any broadcasting at all became available. The catch-up of previously broadcast TV content was, already at that time, not necessary for such service and in 2013 it become evident that a VOD service without any link to broadcasting could be a viable way to reach viewers. The link between traditionally broadcasted and streamed content did not exist in relation to Netflix and any such strong link does not exist currently in relation to all media companies, as content can be delivered to viewers by either of those technological means independently.

35. The VOD segment was allowed consequently by other technological development and developed further when unlimited internet at viewers homes become available. Further to the technological development long-term content rights and wider content catalogue for VOD services became available. At the same time various other services have been developed, including various social media services, which increasingly capture viewers’ attention and daily viewing time.

36. **Chart 7 – Developments and extension of audiovisual market competition field in Finland**
37. In that context, Yle's VOD service was introduced through experiment and developed gradually as a reflection of gradual move of viewers from linear to non-linear content consumption. That shift in audience preferences has increased in recent years, also due to the COVID-19 pandemic.

38. As explained above, in the beginning of the VOD segment development, Yle relied on the catch-up content. Yle was making its programs available on Yle Areena and even 7 days after traditional TV or radio broadcasting was an ambitious goal as the performance rights were limited. With the passage of time and further to the market development longer and more flexible content rights become available, at least partially driven by the introduction of streaming services without any relation to linear broadcasting, such as Netflix.

39. According to the survey, almost 60 percent of Finns subscribe to a streaming service out of whom 61 percent subscribe to Netflix, while important market players include international streaming services such as Amazon Prime or Disney Plus. In addition, a merger between Viaplay and Elisa Entertainment significantly increased competition. Those market trends and leading role of international market players in the streaming segment, who do not rely on any catch-up content, is reflected in different European countries. The public service media companies have an important role to serve their audiences in accordance with their tasks and in most European countries the reach of public service media comes as second after Netflix and Amazon Prime Video. The development in Finland is no different from this general trend.

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41. The Complaint does not take into account those market developments and any potential limitation of Yle Areena e.g. to 7-day catch-up would ignore such market development and move Yle Areena and Yle viewers back to the early years of VOD services. Such limitation would only limit Yle and not commercial operators, who would not be limited to 7-day catch-up period (the most important international market players do not rely on catch-up content at all). That would severely undermine Yle’s ability to fulfil its public service mission and the ability to provide Yle’s content to all Finns and would deprive Finns of access to Yle’s content without any legal or economic justification.

2.5 Yle Areena is not a significant new service

42. As explained above, Yle Areena has been developed gradually as a new technological mean to reach out, especially younger viewers with the content according to the principle of technological neutrality and to fulfil the Yle’s public service mission to reach all. Yle Areena contains generally the same or same kind of content that is broadcast on the Yle’s linear channels, in line with Yle’s public service remit. The only difference is the platform and the technical means that allow for a delayed and continued consumption. It therefore does not constitute a significant new service for which a prior evaluation would be required.
43. Further, the Complainant accepts that the definition of a public service broadcaster’s public service remit can be further specified through a prior evaluation procedure. As explained in the First Response, the General Court and the Commission have concluded in their decisions that a widely defined, qualitative legislative definition is acceptable and meets the requirements of the Amsterdam Protocol to safeguard editorial independence and freedom of speech of public service broadcasters. While prior evaluation is not a strict legal requirement, according to the Yle Act a prior evaluation shall be carried out of such new services and functions that have a more than insignificant influence on the available content services as a whole and that are considerable in terms of significance, duration and cost. At the discretion of the Administrative Council, an evaluation may also be conducted in other circumstances, if this is deemed necessary on reasonable grounds.

44. Contrary to the Complaint, even though not required, Yle Areena has been assessed in 2016 prior evaluation to a significant and relevant extent. The evaluation focused, as regards Yle Areena, on its content packaging and content classification into sub-entities which then can serve users more efficiently. However, the prior evaluation assessed the impact of Yle’s VOD content and interested stakeholders were invited and they shared their views on Yle Areena. The service description and the wide questionnaire presented under the prior evaluation allowed for taking into consideration Yle Areena and its content as whole. The emphasis was on reachability and serving all.

45. The Administrative Council of Yle decided on 20 September 2016 to conduct a prior evaluation on the planned TV channel reform and on plan to develop service of Yle Areena

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12 In addition, one TV channel slot of Yle was removed but the number of channels remained the same (Yle Teema and Yle Fem were to share one channel slot).
13 The questions related to competition law assessment of audiovisual content on the Internet were:

- What is your view on the effects of the change in the service description on the market for audiovisual content distributed via the Internet in Finland? What is your assessment of the size of the market, the geographic scope and the main players?
- Does the development work of Yle Areena service described in the service description directly or indirectly affect to the sales or supply of current or future services and products of your company or services and products under development? If yes, in which way?
- If you estimate that the operations will have negative impacts, we request you to present means to decrease the said impacts.
- Other possible comments which you wish to raise in the market study.

Questions related to assessment of public service remit:
- Which kind of effects the anticipated reform and the way it will be executed have on general availability of Yle’s programming, possibilities for different population groups to use Yle’s services equally, versatility, and quality and originality of programming?
- How does the reform described in the service description affect the tasks set in section 7 of Yle Act (1380/1993)? Specifically:
  - How do you assess the societal meaning of the reform?
  - Does implementation of the reform enhance Yle’s possibilities to execute the democratic, social and cultural tasks set to it, or does it weaken them?
which were related to the foreseeable changes in the market. As part of the prior evaluation an open online survey to market participants and interested parties was executed between 22 September and 7 October 2016. As a basis for the prior evaluation served a service description. An invitation to participate the prior evaluation was delivered to a wide group of market participants and interested parties. Further, it was possible to answer to the public survey form on Yle’s website.

The foreseeable market development was described as follows:

- Watching of traditional channel-based TV will decrease, and reaching especially young audiences is challenging.
- However, video contents will be watched in its entirety more and more, especially through new mobile smart devices, terminal devices
- Especially young audience groups move to users of VOD services and online tv (incl. streamed broadcasting)
- The actual competition takes place on global level, international operators pursue Finnish customers.
- The reachability of online tv of traditional tv companies has not increased further during the most recent years: the mere “catch-up” – service of tv is not adequate anymore.
- The users want that tv offering is available continuously and can be used through mobile devices

46. The estimated effects of the reform were described to "transfer view of TV content from Yle’s broadcasting channels to Yle Areena and network environment. The decrease in reachability of TV channels is estimated to be a couple of %-units, but the overall reachability is aimed to remain the same." Further, it was expected that the reform will make the ability of Yle to act in a new network-based media environment better and strengthen the company’s focus on important product development and on serving the audience.

47. The aims of the reform included, among others, the need "to create entirety of offering which is applicable to future environment of media use and changing consumption habits and which takes the public service strong to the future. Yle acts proactively in the forefront of change which promotes the transfer of the entire Finnish television operations to changing media environment. To be at the cutting edge suits the role of public service. The reform aims to Yle serving all Finnish age groups in a relevant way. " Further, one of the targets was to make it easier to find TV content and better presence in everyday media life of all the Finns in a relevant way: "This way it may be ensured that Yle serves the Finns equally also in the future, also the ones whose media consumption is based on online services. The aggregate ability to serve is an interplay between tv channels and Yle Areena."

48. Among interested stakeholders MTV responded and stated that the market for audiovisual content via the Internet is growing very fast in Finland and that international competitors are conquering the market and that it is therefore important to ensure that domestic services are
competitive. In their opinion it was good that Yle is investing in internet services that
promote market growth.

49. Sanoma responded as well and suggested i.a. that clear limits will be set to Yle’s view share
of viewers in target groups which are commercial most relevant and Yle is obliged to focus
on offering programs serving special audiences and clear limitations are set for entertainment
supply which competes with tv operations and distorts operations of markets.

50. In the competition impact conclusions, it was restated that based on statements received i.a.
that a portion of the market participants have positive attitude towards the project. The
effects on the AV-content distributed through Internet was described as follows: "From
perspective of consumers the content of offered services is essential, and the distribution
platform does not necessarily have so decisive meaning. The aim of the reform of Yle is not
to increase Yle’s market share but the aim is to keep the reachability of TV contents in its
entirety at the current level." It was also taken into account that the public funding of Yle
will not be increased. Based on the evaluation the Administrative Council of Yle accepted
the plans and it was recognized that it is Yle’s task to appropriately use different technologies
and to promote the development and use of online services.

51. A general wide Yle’s public media remit was and is recognized as necessary, otherwise that
definition would not stand the test of time. The definition of Yle’s public remit must be
flexible, qualitative and based on the principle of technological neutrality.

52. The trend of audiences moving from linear to non-linear content was already recognized at
the time of prior evaluation. Viewers would be deprived of a reasonable access to Yle’s
content and potentially turn even more to international market players, which could also
harm the domestic VOD services providers.

53. 2016 prior evaluation emphasizes the need to reach all audiences and the limited reach of
traditional TV channels, while the purely online market players, such as Netflix or Youtube
increasingly compete for viewers’ attention and time. Therefore, while 2016 prior evaluation
focused on the sub-channel structure and decrease of broadcasting slots, the budget of Yle
was not changed but allocated differently.

54. In conclusion, it is apparent that Yle Areena and its VOD services have been extensively
considered already in the 2016 prior evaluation, during which all potential negative feedback
on the market could have been raised during the public hearing and, while Sanoma explained
some concerns described above, commercial players, such as MTV, did not raise any general
objections in relation to Yle Areena.
2.6 There is no justification for catch-up/catalogue restriction

55. While for market players that also offer traditional TV broadcasting services catch-up still constitutes part of their VOD content, the historical distinction between those two ways of reaching viewers is becoming increasingly blurred due to the market development and changing viewers’ preferences. In that context, catch-up restrictions are not justified in general as for the audiences that do not have any relation with the traditional TV broadcasting the idea of catch-up service is unknown. Especially children and younger generations do not follow the traditional TV broadcasting schedule and their expectation is to view the media content at the time and on the device of their choice.

56. Therefore, while there is still a strong relationship between broadcast and VOD content for market players active in both segments, the proportion of catch-up viewing time is decreasing. At the same time the distinction between linear and non-linear content is losing its value and an increasing number of VOD services providers do not offer traditional broadcasting. As explained such distinction and catch-up does not play any role in relation to the main VOD market players, who do not offer traditional broadcasting at all.

57. Already some initial internal Yle’s surveys that form part of the basis for developing Yle Arena have shown that young viewers no longer follow the linear content and expect e.g. that the whole series are available at the same time. Especially for viewers under 30 years old VOD is almost the only way the consume media content and it does not matter for them whether or when the content is broadcasted in the traditional TV as they do not use linear content services.

58. Any strict catch-up content restriction, such as 7-day catch-up period argued in the Complaint would not be understandable for viewers. Any such short period would not even allow viewers to become aware of the content as the awareness usually slowly builds up, also through the social media. While viewers may consume recent news the next day, for these reasons e.g. drama series or documentary content cannot be reasonably expected to be viewed within 7 days after linear broadcasting. A lot of drama series are viewed within a year or even later as viewers often want to watch the content again. Further, quality content does not get old and it may become topical later on. Long availability is also in line with effective use of public funds.

59. An arbitrary 7-day catch-up limitation has no legal or economic foundation and there is no evidence that a longer catch-up content availability leads to any manifestly disproportionate effects on competition. As explained by the EU courts, the legal standard requires that manifestly disproportionate effects could only arise if a public service broadcaster’s activities make it “impossible or excessively difficult” for private operators to conduct

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14 See for example: “Are you in this group? One in five Finns watched their favourite series more than once during the year” - https://corporate.dna.fi/press-releases?type=stl1&id=69913185&scrollTo=UlpEOgFgPw1f.
business on the market. The VOD market segment is rapidly growing and many commercial operators provide VOD services in Finland. International operators, including successful new entrants, are strongly competing for viewers’ attention as those international operators’ market shares are growing in most EU countries. There is no evidence that Yle Areena adversely affects competition, let alone that it would do so to the extent that would satisfy the required strict legal standard described above.

60. Further, Yle Areena services cannot be more restricted than services of other VOD service providers as otherwise Yle would not be able to fulfil its statutory public mission of reaching all Finns, without excluding certain groups of viewers.

2.7 Yle Areena’s value to the Finnish society

61. Further to the market development and changing viewers preferences, Yle Areena is important in order to fulfil Yle’s statutory public mission by providing versatile and comprehensive programming for all. As stated in the strategy of Yle: “TV and radio channels remain important among the mature adult population, but recognizing the move towards a digital production and publishing environment, Yle ensures that it continue to serve all people in Finland during and after the transition. Such transition means also that content is available in Yle Areena and on mobile services”. If Yle Areena services would be unjustifiably restricted it would negatively influence Yle’s perception and the value it provides to the Finnish society.

62. Yle Areena’s content cannot be disposable but should be available more widely and permanently so viewers do not miss programs and discussion topics. In that way Yle can fulfill its statutory mission under Yle Act to provide programming to all under equal terms. The European Council recognized that a “broad public access, without discrimination and on the basis of equal opportunities” is essential for public service broadcasting providers. The traditional TV broadcasting is not suitable for reaching all viewers, which may prefer to watch programs at different times without being bound to the TV schedule or are not able to adjust to TV schedule. While watching TV has become more private, through the use of Internet services the sense of community can be increased. Further, Yle’s online services support not just passive transfer of content but allow viewers and Yle to be more involved. As described in the First Response, a strict and arbitrary limitation of content availability would run against Yle’s obligation to spend the public money efficiently and responsibly.

63. As explained in the First Response, Yle and Yle Areena is fulfilling the above mission by providing versatile and comprehensive content for all under equal conditions. By offering its content through Yle Areena, Yle is performing its role as public service media and it is fulfilling the democratic, social and cultural needs of society. Such obligations are not imposed on commercial operators and their offering is materially different as commercial

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operators focus primarily on the entertainment and other commercially attractive content. Yle’s offering, on the other hand, is diverse and broad and it is not driven by the mere pursuit of viewers’ attention. The versatility of Yle’s content is not only reflected by the variety of genres offered, but also by specific content within those genres.

64. While the commercial market players can focus on maximizing the revenues and time spent by viewers on the service, Yle’s mission is to increase Finns’ understanding of each other and the world. Accordingly, recent survey shows that Yle is important from the social perspective and personally meaningful to 58% of Finns.\textsuperscript{16} Yle’s online and mobile services reach three out of four Finns weekly and the percentage is growing. 71% of Finns trust Yle very much or fairly much, which is four percentage points more than in the previous year. 91% of respondents found that Yle performed at least fairly well.\textsuperscript{17}

65. Yle’s importance to the Finnish society is reflected in surveys which show that Yle has been successful in its public service mission and its importance to society is growing. Further, these reflect the value of Yle Areena to the Finnish society and Yle Areena’s increasing role in reaching audiences. When compared with the number of declining use of linear broadcasting this indirectly means that Finns are also recognizing the value of Yle Areena, without which a growing number of Finns would be deprived of access to Yle’s content and public perception of Yle would likely decrease.

66. \textbf{Chart 10 – Yle’s societal importance and personal relevance}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{chart10.png}
\caption{Societal importance and personal relevance.}
\end{figure}

\textsuperscript{16}\ Yle’s KMK survey spring 2021
\textsuperscript{17}\ https://yle.fi/aikaiset/artikkelit/2020/12/18/yle-is-perceived-to-be-more-important-and-reliable-and-more-people-are-using.
67. Therefore, if Yle Areena services would be unjustifiably limited, for example by introducing an arbitrary and artificial catch-up time limitation, it would not be able to provide value to an increasing group of Finns. That would not be in the interest of the viewers and would not only deprive Yle from the ability to fulfil its public mission, but it would also move Yle’s services many years back to the past, while the audiovisual market has drastically changed.

2.8 Yle and Yle Areena provide value to special and minority groups

68. A part of Yle’s public service mission is to provide versatile, comprehensive and valuable content to special and minority groups, as part of its obligation to provide services to all under equal conditions in public communications networks nationally and regionally. According to Yle’s strategy referred to in the First Response: “Yle helps people feel that they are part of the society around them” and Yle’s “services to special groups are unique”.

69. Yle’s obligation is essentially fulfilled by the offering on Yle Areena, which provides a unique value also to those groups of viewers. In addition, Yle Areena fulfills Yle’s statutory obligations, which include supporting the preservation of Finnish cultural heritage, tolerance, equal treatment, equality and cultural diversity and programming for minority and special groups (Section 7 subsection 2, subpoint 5 of the Yle Act), and promotion of cultural interaction and maintaining production addressed to abroad (Section 7, subsection 2, subpoint 6 of the Yle Act), together with other specific tasks set in the Yle Act\(^\text{18}\). These all relate to accessibility services addressed to special and minority groups.

70. Yle’s mission is to support equal opportunities to participate in the society and in the debate on it as well as to shared experience. The diversity in the Yle’s offering means that people from different backgrounds, such as linguistic and cultural minorities as well as sensory impairment or other functional impairment disadvantaged, will be treated equally. Services for special groups and other minorities include:

- program subtitling (subtitling for deaf and hard-of-hearing)
- translation subtitling
- sign language services
- audio subtitling (means that the machine sound automatically reads the subtitles displayed on the screen)
- audio description
- plain language services

\(^{18}\) Section 7, subsection 2, subpoints 1-4 in the Yle Act: 1) support democracy and everyone’s opportunity to participate by providing a wide variety of information, opinions and debates as well as opportunities to interact; 2) produce, create, develop and maintain Finnish culture, art and inspiring entertainment; 3) take educational and equality aspects into consideration in the programmes, provide an opportunity to learn and self-development, give focus on programming for children and young people, and offer devotional programmes; 4) treat the Finnish and Swedish speaking population equally and produce services in the Sami, Romany and sign language and, where applicable, also in the languages of other language groups in the country.
Minority language services include:
- services on minority languages
- Yle Kielikoulu - Yle Språkskolan

Sami language services
- Sami language news and current affairs
- Sami language content for children.

All these services are offered at Yle Areena and services for special groups are offered both in Finnish and in Swedish.

71. Audio subtitles serve primarily visually impaired as well as persons with difficulties in reading the text. In audio subtitles on-screen translation use a synthetic speech. According to the legal obligations, Yle includes audio subtitles to all foreign languages translated programs. The audio description concerns pictorial information that a visually impaired person cannot see and it is described verbally. Yle is the only broadcaster to provide such service in Finland. These services benefit the visually impaired viewers and also, for example, people with conditions such as autism and learning and reading difficulties (including the developmental language disorder and dyslexia). Yle’s audio description is shown in Finnish as well as in Swedish.

72. At the request of the Finnish Transport and Communications Agency, Annampura Oy tested the accessibility of streaming services for the hearing and visually impaired and other special user groups in October 2020. The subjects of the testing were YLE Areena, MTV, Nelonen Ruutu and AlfaTV. According to the report for all of these streaming services, accessibility services such as the availability of subtitles for domestic programs or the functionality of screen readers were tested. Accessibility services were tested with different types of terminals: desktop browsers, mobile applications, smart TVs and media players.

73. According to the report, Yle Areena offers clearly the most comprehensive and high-quality support for subtitles which e.g. hearing impaired people need. Yle also produces sign language content, which is listed in the search categories of Yle Areena separately. From the perspective of viewers requiring assistive device, Yle’s applications were also valued the most.19

74. Further, Yle’s own internal surveys confirm the general findings of the report discussed above. Yle’s offering through Yle Areena is essential in order to serve these special groups. Yle’s surveys also show that hearing and visually impaired people watch mainly documentary and domestic and foreign series at Yle Areena.

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19 https://www.traficom.fi/sites/default/files/media/publication/Suoratoistopalveluiden%20saavutettavuusraportti%202019.pdf
75. **Chart 11** – Yle’s survey in relation to special groups

**Video content is considered to be more accessible on Yle Areena than other comparable platforms**

**Question:** How would you rate the accessibility of Yle’s services compared to other media services in Finland (e.g. domestic tv channels, foreign tv channels, Netflix, Ruutu, NRJ, Radio Nova, Supla, HS.fi, mtv.fi)?

<table>
<thead>
<tr>
<th>Yle Areena video content</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weak vision/poor eyesight (n=23)</td>
</tr>
<tr>
<td>Severe vision impairment (n=37)</td>
</tr>
<tr>
<td>Blind (n=30)</td>
</tr>
<tr>
<td>Moderate hearing impairment (n=11)</td>
</tr>
<tr>
<td>Deaf or severe hearing impairment (n=8)</td>
</tr>
</tbody>
</table>

| Source: Survey on Yle among the vision and hearing impaired, spring 2021 |

76. For example, in 2020 Yle subtitled all Finnish and Swedish-language television programs with the exception of some live broadcasts. Most of the subtitles on TV programs are also published with subtitles at Yle Areena. Program subtitling is a statutory service in addition to audio subtitling service. Yle’s accessibility obligation is stricter than that concerning commercial operators.\(^{20}\)

77. The main target audience for subtitling of hard-of-hearing is especially deaf and other hearing-impaired viewers in Finland the number of which is over 800,000\(^{21}\) (of a total population of approximately 5.5 million). Subtitles are helpful also for immigrants and the aging population and in situations where the sound of the program cannot be kept on. The number of people over 65 year in Finland is 1,231,274 and of them 524,583 are over 75 years old\(^{22}\). The number of foreign language residents in Finland is 432,847 (7.8% of the total population)\(^{23}\).

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\(^{20}\) Section 211 of the Information Society Code (917/2014).

\(^{21}\) https://www.kuololiitto.fi/kuulo/.

\(^{22}\) https://findikaattori.fi/en/14

\(^{23}\) https://www.tilastokeskus.fi/tup/suoluk/suoluk_vaesto_en.html#Population%20by%20language%20on%2031%20December
blind and visually-impaired viewers in Finland. According to the studies it is assumed that there are 50,000 visually impaired people 30 years of age and older in Finland. Of them, approx. 8,400 are blind and approx. 42,000 have poor eyesight. In addition, the study shows that there would be 173,000 people with visual problems. Audio subtitling is helpful also for viewers with conditions such as autism and learning difficulties. 10-20% of the Finnish population is estimated to have learning disabilities.

78. The recent legislative amendments to the obligations related to accessibility services, which entered into force in 2021, extend accessibility requirements in relation to on-demand services. These amendments also recognize that an increasingly number of viewers switch to internet subscription services. Therefore, improving the availability of on-demand services would allow that through those new means, audio and subtitle services will be more available to special groups in the future. In fulfilling its obligations, and beyond, Yle contributes to the realization of the rights of the freedom of expression, equal treatment and linguistic right guaranteed by the Finnish constitution to special groups.

79. Content which is available at Yle Areena for a long-term is an essential prerequisite for the exercise of freedom of expression and participation in the society of special groups. These groups shall have access to all Yle’s services, including series type programmes and entertainment, in addition to news and current affairs. Only continuous availability of comprehensive content with accessibility services enables these special groups to be treated equally.

80. Yle provides important services to Finns living abroad according to its public service mission, which requires Yle maintaining production addressed to Finns living abroad. Many Finns travel abroad and they have access to Yle services in Europe through Yle Areena (through Yle account). In addition, approximately 300,000 Finns live abroad and they do not have usually access to traditional TV broadcasting of Yle. Those viewers are only able to view content in Yle Areena, the copyrights of which are not limited geographically. About 80% of Yle’s content is available for watching and listening abroad. Short and artificial catch-up restrictions would likely deprive such viewers from access to Yle content. Just recently the Committee of Transport and Communications of the Finnish Parliament, emphasized the services to special groups when reviewing the statutory report of the

24 THL (Health 2011)
25 https://www.nki.fi/fi/rakovammarekisterin-vuosikirja
26 https://www椰ilito.fi/tyhke-ja-neuvonta/tietoa-oppinaisuuskeksista/
28 Except for that in Sweden Yle’s TV programs can be watched on TV Finland which is broadcasting compiled of programs on Yle TV1, Yle TV2, Yle Fem and Teema channels which can be watched via antenna and cable TV freely within their reach on certain areas of Sweden. Further, different service providers and operators have a possibility to include TV Finland to their own offering. In addition, a couple of Estonian and Swedish cable TV- and/or IPTV operators forward Yle’s TV1, TV2 and Yle Fem and Teema channels as part of their payable TV channel services.
Administrative Council of Yle on the activities of the company for 2020. It stated in its report that it considers the task of Yle to provide services in both Finnish national languages Finnish and Swedish as well as in Sami, Romani and sign languages very important and, where applicable, also in the languages of other language groups in Finland.

81. Also from the above perspectives, any unjustified and arbitrary limitations of Yle Areena’s reach, e.g. through the introduction of strict catch-up time restrictions would limit Yle’s ability to reach viewers of those special and minority groups and deprive them from the value that Yle Areena can provide. For certain accessibility services, Yle is the sole provider of services (e.g., audio description and sign language interpretation). From the perspective of these special groups, if Yle Areena’s reach would be restricted to short-term availability only, these special groups would be left almost entirely without content with accessibility services. The ability to access a variety of contents at Yle Areena for a long-term is of paramount importance to the exercise of free speech by special groups.

2.9 Yle Areena provides versatile and diversified content

82. As explained in the First Response, Yle Areena does not focus on mere entertainment and, as part of its public service mission, it provides versatile content for all groups of the Finnish society. Yle Areena provides content of different genres, of which none is of a primary importance.

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84. The Complaint’s criticism of certain genres is not justified as Yle has an obligation to provide versatile and diversified content that meets the needs of all groups of the Finnish society, according with the Yle’s public service mandate. In addition, the European Council stressed that public service broadcasting must “reach wide audiences” and be able “to continue to provide a wide range of programming (...) in order to address society as a whole”. While Yle is not focusing on the mere entertainment a general exclusion of certain genres is also not justified as the boundaries between different genres are not always evident. As explained below, even certain reality type of programming that show lives of different members of the Finnish society can contribute to the discussion, raise awareness and fulfill Yle’s public service mission. In the development of reality-programming, special care is taken so the programs are compatible with public service values and they illustrate different characteristics of the society and people’s situations in life. That approach is clearly different from that of commercial operators.

85. In addition, Yle and Yle Areena has a public mission of raising awareness of the different members of the Finnish society and of the world. Accordingly, even though the country of origin of majority of content on Yle Areena is Finland, it also provides content from other countries.

86. **Chart 13 – Content available on Yle Areena in 2020**

32 Entertainment is also not excluded from Yle’s service, but directly mentioned as part of Yle’s activities in Section 7 of the Yle Act.
87. In general, the European content constitutes the main part of Yle’s linear and Yle Areena’s offering, which reflects the difference between Yle and commercial market players, which often focus more on the non-European content.

88. **Chart 14 – European origin of TV programmes**
<table>
<thead>
<tr>
<th>TV company</th>
<th>TV channel</th>
<th>hours (h)</th>
<th>% of the programmes</th>
</tr>
</thead>
<tbody>
<tr>
<td>YLE</td>
<td>TV1</td>
<td>5056</td>
<td>95 %</td>
</tr>
<tr>
<td></td>
<td>TV2</td>
<td>4106</td>
<td>87 %</td>
</tr>
<tr>
<td></td>
<td>YLE Teema</td>
<td>2555</td>
<td>82 %</td>
</tr>
<tr>
<td></td>
<td>YLE Fem</td>
<td>2384</td>
<td>98 %</td>
</tr>
<tr>
<td>MTV Oy</td>
<td>MTV3</td>
<td>4032</td>
<td>77 %</td>
</tr>
<tr>
<td></td>
<td>MTV Max</td>
<td>301</td>
<td>47 %</td>
</tr>
<tr>
<td></td>
<td>Ava</td>
<td>2479</td>
<td>47 %</td>
</tr>
<tr>
<td></td>
<td>Sub</td>
<td>2474</td>
<td>43 %</td>
</tr>
<tr>
<td>Sanoma Media Finland Oy</td>
<td>Nelonen</td>
<td>4174</td>
<td>57 %</td>
</tr>
<tr>
<td></td>
<td>Hero</td>
<td>3078</td>
<td>51 %</td>
</tr>
<tr>
<td></td>
<td>JIM</td>
<td>3784</td>
<td>55 %</td>
</tr>
<tr>
<td></td>
<td>Liv</td>
<td>4067</td>
<td>58 %</td>
</tr>
<tr>
<td>Discovery Networks Finland Oy</td>
<td>TV5</td>
<td>1988</td>
<td>31 %</td>
</tr>
<tr>
<td>Fox International Channels Oy</td>
<td>FOX</td>
<td>1308</td>
<td>19 %</td>
</tr>
<tr>
<td>Brilliance Communications Oy</td>
<td>Alfa TV</td>
<td>3275</td>
<td>81 %</td>
</tr>
</tbody>
</table>

Source: Translated extract from the original Finnish language table on European origin and independent production of TV programmes in 2018-2019 published by Traficom 23 October 2020.¹³

89. Yle’s content is different from that of the commercial broadcasters and Yle provides, for example, more documentary content. In addition, some of the commercial content may not be suitable for public broadcasting and Yle Areena as it may be based on marketing (containing commercial content), which is not allowed under the Yle Act. Further, Yle’s offering to young people typically consists of content that would not be considered interesting from the commercial perspective. Yle’s aim is not to maximize the numbers of viewers from each type of content offered. Therefore, Yle aims at providing value to smaller audiences, including special groups.

2.10 Yle Areena does not distort competition for the content acquisition

90. As explained above, the legal standard would require the Complaint to show that Yle Areena has “manifestly disproportionate” effects on the market and that Yle’s services make it “impossible or excessively difficult” to conduct business on the market. There is no evidence that Yle Areena services could reasonably lead to any disproportionate effects of such magnitude. On the contrary, Yle’s activities are proportional to the public service objectives

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it pursues and Yle’s content acquisition has positive effects on content industry. Further, Yle’s share in content acquisition is decreasing, as described below.

91. Yle acquires content from around 50 countries around the world, looking for the most attractive content that would fulfil its public mission and provide versatile programming (around 80% of productions are from Europe). The budget for foreign acquisitions is relatively small and it is distributed between different genres. The budget for drama genre has not increased.34

92. The competition for content is increasing, also due COVID-19 and international market players competing strongly for attractive content. Yle’s content acquisitions from Finnish independent producers have been important for creating skills and resources for domestic productions and contributed to the export of Finnish productions. Domestic programming has been brought up just recently by the Committee of Transport and Communications of the Finnish Parliament. In its report35 the Committee stated that through domestic programming Yle is able to support the cultural sector. It considers the role of Yle essential in respect of development of Finnish culture and the status of Finnish language and production of Finnish programming is an important task of Yle. The competition for the Finnish content become more apparent when international market players have entered the local market and are successfully building viewer base in Finland. The international market players have also started to acquire Finnish content. International players often buy exclusive rights. The increased production and consumption of the Finnish content also shows that viewers’ needs are far from being satisfied. Finnish content is especially important as Finnish language area is small and therefore the amount Finnish content available is limited.

93. Yle’s programming has to be versatile and include e.g. comedy, thriller, historical drama, relevant content for society and content that encourages discussion. Yle supports wide culture and receives proposals on productions on its online platform. Background studies may take two years before a script is ordered. Yle makes long term plans on which content is needed and it may take a couple of years before a planned content is published. Development process is complicated and expensive. The approach of Yle is different from that of the commercial operators and supports versatile and innovative producers serving all kinds of audiences.

94. On the other hand, commercial operators may purchase script immediately, while Yle has longer production time as the needs of commercial operators are different. Yle carefully develops its productions and they do not have to be commercially attractive (for example: Pala Sydämemätä - A Part of the Heart36 – which is a delicate subject likely not appealing for

34 See CE Report, paragraph 6.47.
36 An eight-episode drama series published by Yle through linear TV and Yle Areena in March 2021 concerning children welfare - https://areena.yle.fi/1-50539234.
commercial operators). The funds are not used in proposition to how many viewers will be reached but how the public service remit can be best fulfilled.

95. The Complaint’s criticism of certain genres is not justified. Distinguishing for example reality from documentary content may be more an academic debate than the real analysis of the audience’s needs. Yle trusts specific methods of making good programming for specific purposes, compatible with public service values. Public streaming broadcasting is not defined by genres itself, but how it uses the methods of the genre. Therefore, the mere categorizing content by genre type does not show the differences between Yle’s content and commercial operator’s content. Accordingly, Yle is not strictly competing or producing similar content to the commercial operators’ content. Yle primarily takes into account its obligation to provide a diversified content and it is taking public values into account when the content is selected.

96. Yle needs versatile content and has to acquire new content. Yle is able to support start-up productions and small-scale productions before they have commercial relevance. Yle started morning coffee sessions with production houses held two time a year. About 100 people attend the session and learn specifications and needs of Yle, including productions for children and young people. Commercial operators may not be interested in performing this way.

97. According to the CE Report there is no evidence to suggest that Yle would distort content markets. The Complainant has not presented evidence in support of its allegations. Yle’s ability to match market prices for content and to outbid commercial rivals is constrained by Yle’s budget and Yle’s statutory remit requiring content diversity. Further, based on the CE Report assessment,  

98. There are therefore no reasons for a conclusion that Yle Areena disproportionately distorts competition for content acquisition or that certain type of media content should be excluded from the Yle’s offering, such as reality or drama programming.

3. Online learning services

99. The definition of Yle’s public service remit as set out in Section 7 in the Yle Act explicitly covers learning services: “in particular, Yle’s public service programming shall take educational and equality aspects into consideration in its programmes, provide an opportunity to learn and study, and give focus on programming for children and young people.” Further, the pending amendments to Section 7 of the Yle Act clearly recognize this
The statutory task of Yle as described in the First Response\textsuperscript{37}. The importance of this task has further been emphasized in the above-mentioned statement of the Committee of the Finnish Parliament. In its statement\textsuperscript{38} the Committee drew attention to the task of Yle in respect of free learning materials, which the Committee considers to be an important factor in promoting the equality between children and young people. As stated already in the First Response the free access to education materials, including old matriculation exams, ensures equality among students.

100. The overall market for learning materials consists of both printed and digital content and services. In primary and upper schools printed materials are still mainly used. The publicly available information shows that approximately 80\% of net sales of learning materials for primary school (lower and upper) and total secondary school (upper secondary and vocational secondary) concern printed materials and only approximately 20\% concern digital materials\textsuperscript{39}.

101. As explained in the First Response, online learning services constitute only a minor part of Yle’s offering, but which is also a part of Yle’s public service mission. Yle Areena content can also be used for learning purposes and in 2012 it has been agreed between the Finnish National Agency for Education and the copyright organizations and relevant broadcasters that domestic TV programs on Yle Areena and Live Archives (together with domestic and foreign TV programs broadcasted via Yle’s channels and via MTV3 channel, except for certain content) can be used for free for teaching purposes.

102. As also explained in the First Response Yle’s strategy is not to expand its online learning services so that those services replace the commercial offering. On the contrary, Yle’s online learning content only supports education and learning by providing useful content outside the schools curricula, which is enriching from the schools’ perspective and which also addresses special needs, such as the need for language skills and integration of immigrants. Further, online materials and services which the commercial operators provide will be updated in accordance with curricula, which is not the case with the online learning material of Yle. Yle’s input to online learning content has not increased during the years but remained approximately at the same level.

103. While also many public institutions and third sector (non-profit) organisations offer certain learning materials to the public or to specific groups, Yle’s online learning services are not able to disproportionately affect competition on the market.

104. For example, during the COVID-19 pandemic schools and teachers have increasingly used online materials and used platforms such as YouTube that is the biggest source of various

\textsuperscript{37} See paragraphs 130-133.
\textsuperscript{39} Source: Suomen Kustannushallistys ry, Learning Materials 2020/1-12
http://tilastointi.kustantajat.fi/oppimateriaalitilasto/20201-12
educational materials (platform for educational videos). Further, Google Classroom’s popularity has increased especially during the COVID-19 pandemic as a digital platform for teachers. In addition, the Complainant stresses itself that it operates in a highly competitive market that includes large international companies (e.g. Google, Apple, Microsoft), digital entrants, educational technology companies, open educational resources and user-generated content, in addition to be exposed to competition from traditional publishers in different countries.\footnote{The listing prospectus of Sanoma Corporation dated 19 March 2021, pages 2 and 6 and Half-year report 2021 p. 16.} The Complainant has also a strategy of further growth in the educational sector through local markets in connection with curriculum renewals, which reflects the important of learning materials which have been produced in accordance with curricula – a service which Yle is not providing.\footnote{Sanoma CEO presentation to AGM 2021 p. 10.}

105. In that context, Yle as a provider of limited learning materials that support education, can only be viewed as a minor market player, which does not offer printed materials and does not provide content designed for the schools’ curricula. The educational and learning content has been part of Yle’s offering for decades and the Complainant has been able to compete on that market successfully, similarly as other market players.

106. As explained in the CE Report, there is no \textit{prima facie} evidence that supports the Complaint’s allegations. Yle operates in a small niche within the on-line learning services market, with a focus on life-long learning and media education. Yle has not been expanding its offering of learning services overall and its offering is and will remain distinctive. The nature and limited magnitude of Yle’s online learning materials makes it implausible that Yle could commoditize online learning services, or even online learning materials.

107. There could be only a limited overlap between Yle’s online learning services and commercial services. Yle’s services are largely complementary to commercial services. Where there are partial overlaps, the magnitude of Yle’s free offering is small when compared to the offering of commercial providers. Therefore, Yle’s activities are unlikely to compete with existing commercial services and they are unlikely to cause any disproportional effects on the online learning services market in Finland. The growth observed in the commercial market does not support Sanoma’s allegations of Yle “commoditizing” the market either. Yle has been entrusted in the Yle Act an obligation to provide an opportunity to learn and self-development. Also for those reasons the allegations raised in the Complaint are questionable, lack foundation and do not reflect market reality.

4. The economic assessment of the Complaint shows that it rests on erroneous and incorrect assumptions and Yle’s services have no disproportionate effects on the market

108. The Complaint rests on assumptions in relation to the alleged negative and disproportionate effects of Yle’s VOD services and online learning services on the market. The CE Report, attached under a separate cover, shows that Complainant’s allegations are not at all
supported by economic evidence and are based on incorrect and erroneous assumptions. While the Complaint lacks any significant empirical foundation, the substantiated economic assessment of the Complainant’s allegations in the CE Report, including empirical evidence in the form of a representative survey, shows that Yle’s services do not have any disproportionate effects on the market.

109. The magnitude of the alleged State aid can be an indication in relation to its ability to cause any adverse effects on competition. As explained in the CE Report, the Complaint significantly overestimates the magnitude of the alleged State aid to Yle attributable to VOD services. The Complainant’s estimates of the alleged State aid are unclear and implausible. Sanoma’s estimate of the alleged State aid is considerably exaggerated when compared to the assessment provided in the CE Report, which is based on Yle’s accounting data and principles approved by the regulator (Traficom). While the Complaint focuses on certain types of content, such as drama, the CE Report shows that Yle’s spending on drama (in real terms) has actually decreased in the last 10 years.

110. That relatively small amount of the alleged State aid has not significantly changed over time. When compared to the whole audiovisual market and its constantly developing and growing VOD segments it appears evident that the alleged State aid to Yle cannot have any disproportionate effects on commercial market players that face competition mostly from the international global market players.

111. As explained in the First Response, the Complaint correctly considers all audiovisual services to constitute one relevant market. However, in its allegations the Complaint focuses only on the alleged negative impact of Yle Areena only on selected VOD market segments and not on the overall market. Further, the Complaint’s calculations in relation to the effects of “beyond catch-up” Yle Areena content remain unclear and substantially overestimated. As the economic analysis contained in the CE Report shows, the Complaint substantially overstates the effects of Yle Areena even in relation to VOD market segments, which, according to the Complaint, constitute only a part of the relevant market including also linear services.

112. The potential impact of Yle Areena on commercial operators is relatively small and far from being disproportionate to the extent that it could meet a high legal standard required by Article 106 TFEU, Amsterdam Protocol and EU courts. The legal threshold would require the Complainant to show that Yle’s services make it impossible or excessively difficult for commercial operators to conduct their business. That threshold is not met at all, not only in relation to Yle’s impact on the market for audiovisual services, but also in relation to any market segment considered by the Complaint. As explained in the CE Report the commercial VOD segment has been growing rapidly in the recent years, regardless of Yle’s services.
113. The available international research referred to in the CE Report, clearly suggests that public service broadcasters have either negligible or positive effects on commercial providers’ revenues. Econometric evidence presented by Sehl, Fletcher and Picard suggests that higher per capita investment in public service broadcasting benefits commercial media. The study also finds that in Finland, private media has one of the highest per capita revenues both from advertisement and from subscription fees. According to the study, this could be driven by “race to the top”, by which the private media has to actively compete for audiences with the public service broadcaster, but commercial operators also benefit from audiences the public service broadcaster has fostered. Accordingly, the UK and the Nordic countries have very high market penetration in relation to SVOD services, while public service broadcasters in those countries are well established.

114. On the basis of a survey-based analysis the CE Report suggests that the Complainant substantially overstates any revenue impact of what the Complainant calls Yle’s “SVOD-like service” could have on commercial operators. The Complaint manifestly exaggerates and overestimates Yle Areena impact on the SVOD segment. The empirical evidence and the CE Report shows that the household stacking effect estimated by the Complainant is overestimated

115. The economic evidence show that neither AVOD nor new SVOD services appear to be the most commonly chosen alternatives to Yle Areena in the light of the survey evidence. A greater proportion of Areena users would, in the absence of Areena, shift back to watching linear television or spend more time watching their pre-existing SVOD subscriptions. The Complainant’s assumption is erroneous as shown by the results of the survey and empirical evidence provided in the CE Report. According to that data out of those users who already have at least one SVOD service, in the absence of Yle Areena, only 6.8% would have subscribed to one additional service and only 1.2% would subscribe to more than one additional service. Considering a potential scenario when Yle Areena content would be restricted to 7-day catch-up, only 2.5% of viewers would have subscribed to additional SVOD service. The empirical results clearly show that the theoretical restrictions on Yle Areena, which the Complainant argues, would significantly limit viewers’ options and therefore Yle’s ability to serve all Finns under equal conditions, while they would have almost no impact on the commercial operators.

116. In relation to the alleged impact of Yle Areena on the AVOD market segment the Complaint also rests on unfounded assumptions that Yle Areena leads to a significant restriction on the

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commercial operators’ ability to raise revenue. The Complainant’s allegations in relation to AVOD segment lack economic foundation. The economic evidence shows that the potential impact of Yle Areena on the AVOD segment is very small.

117. The Complainant’s allegations regarding customer ‘diversions’ to AVOD and specifically the Complainant’s own AVOD service appear unfounded and not consistent with the evidence obtained from the survey. The empirical evidence presented in the CE report shows that only a very low number of viewers could potentially switch to the Complainant’s AVOD services in the absence of Yle Areena. The empirical evidence shows that of the 50% of Yle Areena users who did not watch the Complainant’s AVOD service, only 9.5% would watch any AVOD service if Yle Areena would not be available. Most commonly, Yle Areena would be replaced with Yle’s linear services or with the increased use of existing SVOD subscriptions. Only 1.9% of viewers currently not watching the Complainant’s AVOD service (Ruutu) would switch exactly to this service provider in the absence of Yle Areena.

118. If Yle Areena would not be available 15.4% of viewers who use both Yle Areena and Ruutu would spend more time on the Complainant’s AVOD service. If, however, Yle Areena content would be limited to only 7 days after broadcasting (as the Complainant seems to suggest), the survey evidence suggests that only 8.5% of multihoming viewers would increase their use of Complainant’s AVOD. The economic evidence show, that it is unlikely that specific properties of Yle Areena, or Yle Areena as a whole, make commercial providers’ VOD business excessively difficult or impossible to conduct.

119. The Complaint raises certain arguments in relation to the alleged impact of Yle VOD services on the content acquisition markets. However, the Complainant’s allegations are not supported by solid evidence. Contrary to those allegations, the economic assessment presented in the CE Report clearly shows that there is no evidence that any significant distortions in the content market could be attributable to Yle. While in the past Finnish content was primarily produced for domestic providers, the growing popularity of Finnish drama content has led to both domestic and international SVOD providers acquiring and commissioning more original content in Finnish.

120. Insofar as Yle’s investments in domestic content have not kept pace with the increasing size of the domestic content market, Yle’s relative share of the domestic content market has diminished in the recent years.43 Yle primarily focuses on different content that is not attractive from purely commercial perspective.

Further, Yle's relative share of the domestic content market has diminished in the recent years as the overall market has increased in size. In addition, Yle's overall content, and within that drama, spend has not increased in real terms. Further, there is no evidence of Yle

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43 See CE Report, paragraph 6.47
inflating the input market for domestic productions and creating barriers to entry and expansion.

121. In relation to online learning services, the CE Report concludes that Yle operates in a small niche, Yle has not been expanding its offering of learning services overall and its offering is and will remain distinctive and the nature and limited magnitude of Yle’s online learning materials makes it implausible that Yle could commoditise online learning services, or even online learning materials. Further, any overlap between Yle and commercial learning providers is limited and Yle’s services are largely complementary to the commercially provided services. Where there could be partial overlaps, the magnitude of Yle’s free offering is small relative to the size of the commercial providers. Yle’s activities are unlikely to suppress the overall willingness of consumers to pay for commercial services.

122. Therefore, the Complaint’s allegations in relation to the potential distortive effects that Yle Areena has on the market for audiovisual services are based on speculations, lack clarity and economic evidence. As stated in the CE Report, the available evidence on market outcomes does not support the Complainant’s allegations that Yle’s investments in (and upgrades) to Yle Areena result in an “uncontrolled expansion” distorting competition, “threating the existence of Finnish private media” in the digital age.

123. The increased use of Yle Areena reflects the changing media consumption and the Finnish SVOD market is growing. The consumption of commercial VOD services has increased overall during the period when the use of Yle Areena services has grown. The take-up of SVOD services in Finland are also at a high level compared to other countries. Further, Finland has a high number of SVOD services available for consumers (with the EU average at 16 SVOD providers, Finland has 22 providers) and most SVOD providers have services in Finnish language, which indicates that the Finnish SVOD market is commercially attractive. Therefore, there are no indications of unsustainable profitability of VOD services amongst the main domestic providers. In addition, according to the CE Report there is no prima facie evidence for Yle Areena’s ‘beyond catch-up’ functionalities would significantly depress consumer willingness to pay to an extent that commercial providers would find it excessively difficult to operate in the Finnish market.

124. The Complainant ignores the existence of the wide audiovisual services market, its developments and characteristics. The arbitrary nature of the Complainant’s allegations has been shown in the CE Report. Yle’s VOD services clearly do not have a potential to cause any significant distortions on the audiovisual market that would make it impossible or excessively difficult for commercial operators to conduct their business.
Appendices:

1) Copenhagen Economics – Economic Assessment of Sanoma’s State Aid Complaint Concerning Video-On-Demand and Learning Services CONFIDENTIAL

2) Non-confidential version of the second response

3) Non-confidential version of Copenhagen Economics – Economic Assessment of Sanoma’s State Aid Complaint Concerning Video-On-Demand and Learning Services