

Case number SA.62830

Confidential

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European Commission, Competition DG

Subject

Reply of the Finnish competent authorities to the Sanoma Presentation of 31 May 2022 submitted in case 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 alleged that Yleisradio Oy (*Yle*) has received an unlawful State aid in relation to VOD and “*online learning services*”.
2. On 21 June 2021 the Finnish competent authorities submitted an initial response to the Complaint (*First Finland Response*), which focused on the general comments and specific Commission’s questions. The First Finland Response was supplemented by the submission of 30 September 2021 (*Second Finland Response*) and accompanied by an economic assessment prepared by an economic consultancy Copenhagen Economics (*CE Report*).
3. The Complainant submitted a response of 22 October 2021 (*First Sanoma Response*), which was followed by a supplementary response of 8 December 2021 (*Second Sanoma Response*) (*Sanoma Responses*) accompanied by a submission prepared by an economic consultancy Compass Lexecon (*CL Report*). The Finnish competent authorities submitted their answers to the Commission’s questions on 31 May 2022 (*Third Finland Response*), followed by a submission of 4 August 2022 (*Fourth Finland Response*) accompanied by an additional Copenhagen Economics report on VOD (*CE VOD Report*) and a report on video on demand in Finland by South 180 (*VOD in Finland Report*).
4. On 31 May 2022 Sanoma submitted a presentation to the Commission (*Sanoma Presentation* or *Presentation*). This submission contains a response of the Finnish competent authorities to the arguments presented in the Sanoma Presentation.
5. This response does not include Yle’s business secrets or otherwise confidential information.

2. Sanoma misrepresents market and regulatory updates

6. In the Sanoma Presentation, the Complainant provides an overview of market and regulatory developments with the intention to inform the Commission on “*Yle’s new services or changes in the existing ones*” and “*market development*”.¹ The Complainant misrepresents number of selectively chosen facts which the Finnish competent authorities correct below.

¹ Sanoma Presentation, p. 1.

Podcast

7. The Complainant claims that Yle has entered the podcast market without a prior evaluation. A prior evaluation is not a strict legal requirement under the EU State aid rules and Yle has been offering online audio content before a prior evaluation was introduced in the Broadcasting Communication² and in the Yle Act (1380/1993, as amended).
8. Yle has provided audio content online from 1997 and different types of audio content have been part of Yle's online platform Yle Areena since launch of the service in 2007.³ First content labelled as podcast was published in 2005.⁴ The amendment regarding prior evaluation in the Yle Act came into force on 1 January 2013, which means that at the time when online audio content has been introduced – even if considered it as a new service rather than continuation of an existing service through new means of distribution – legal grounds for a prior assessment did not exist in Finland.⁵ Further, a prior evaluation has been introduced in the 2009 Broadcasting Communication. Thus, the Complainant's claim of Yle acting before having legal mandate to publish podcasts is factually incorrect.
9. The Complainant refers to the recent request for a prior evaluation by RadioMedia ry, an organization representing Finnish commercial radio broadcasters. The Administrative Council of Yle decided on 20 September 2022 to begin a prior evaluation of Yle's provision of audio content online (excluding live distribution of radio channels on Yle's own platform) noting that the provision of audio content online is not a new service within the meaning of the Yle Act.⁶ The Administrative Council of Yle may, under Section 6 a of the Yle Act and at its own discretion, carry out a prior evaluation "*whenever it is deemed necessary on reasonable grounds*".⁷

² Communication from the Commission on the application of State aid rules to public service broadcasting (2009/C 257/01) (**Broadcasting Communication**).

³ Yle Service Description, pp. 18-19.

⁴ Yle Service Description, p. 19.

⁵ Section 6 a of the Yle Act was introduced in amendment 474/2012 of the Act.

⁶ Decision of the Administrative Council on Yle 20 September 2022. <https://yle.fi/aihe/s/10003353>.

⁷ Section 6 a of the Yle Act outlines the ex-ante evaluation process. A prior evaluation may be initiated even when the evaluation is not concerning new services or functions and/or if the services or functions would have only insignificant influence on the available content services as a whole and and/or the services or functions are not considerable in terms of significance, duration and cost.

10. As part of the prior evaluation process, statements of the competition authority, the consumer authority and key industry players are requested or heard orally. In addition, other experts can be consulted, and anyone interested can express an opinion to Yle's Administrative Council. The deadline for such statements expires on 26 October 2022 and Yle's Administrative Council will conclude the prior evaluation of the audio content offered by Yle online, possibly by the end of this year. The decision will be announced and published on Yle's website (together with third party statements marked as public).
11. For the prior evaluation, the Administrative Council of Yle instructed Yle's Board of Directors to provide a description of the services affected (*Yle Service Description*⁸), and four expert reports which concern: 1) Yle's AOD offering and public service, 2) competitive impacts of Yle's AOD contents (*CE Audio Report*), 3) comparative study on regulatory framework in selected countries on AOD services of public service media, and 4) use of new distribution methods in respect of execution of public service from the perspective EU State Aid regulation.⁹
12. In the Presentation, the Complainant describes the existing content offering of Yle Areena.¹⁰ The Complainant claims that Yle has extended its podcast offering into content which competes with commercial offering e.g., true crime. Themes like crime have always been part of public service media remit and have been part of both factual and fictional productions of Yle throughout the company's history and can be clearly considered to fulfill the democratic, social and cultural needs of society as public service media have an obligation to provide a diversified content and are not limited only to some selected genres.
13. The Complainant's claim that Yle Puhe FM channel only includes podcasts is factually incorrect. Yle Puhe consists of content made primarily for Yle Areena or one of the other Yle radio channels, archive content and live broadcasts from sports events.¹¹ The fact that content

⁸ The heading of Yle Service Description (in Finnish): Yleisradion äänisisältöjen tarjoaminen internetissä.

⁹ Expert reports by University of Jyväskylä, Copenhagen Economics, DLA Piper, and Neuvonen&Kuusela available online at: <https://yle.fi/aihe/s/10003353> (in Finnish).

¹⁰ Sanoma Presentation, p. 3.

¹¹ Yle Service Description, Section 5.2.

broadcast on Yle Puhe is primarily pre-recorded does not change the nature of the service offered.

Audio books

14. While not specified by the Complainant, Yle Arena offers approximately 200 titles of the readings of books or audiobooks. Readings of books have been offered by Yle first on FM radio since 1928 and include religious literature and old Finnish classics.¹² Yle Arena does not offer contemporary literature audiobooks while commercial audiobook services contain hundreds of thousands of audiobooks including contemporary literature. Yle has not increased its readings of books offer. On the opposite: the readings of books offering as a regular program format have decreased. The market impact of Yle's provision of audiobooks is likely negligible due to Yle's narrow offering.¹³

Audio drama

15. Radio/audio drama has been in Yle's offering for almost 100 years and is clearly within Yle's public service remit. Based on Yle, other media companies in Finland do not produce radio plays (currently audio drama).¹⁴ It is therefore unclear how restricting Yle's provision of audio drama would benefit commercial providers as it would likely only harm consumers.¹⁵

Third party platforms

16. The Complainant alleges that Yle distributes some of its content through other AOD-platforms and social media. Most of Yle's content has been removed from third party services and currently only seven podcast series are published on Spotify. Some other third parties have, without Yle's permission, added Yle's content using the RSS feeds intended for private use.

¹² Yle Service Description, pages 27 and 28.

¹³ CE Audio Report, para 2.39.

¹⁴ While none of the domestic media companies have produced audio drama, according to the CE AOD report (para 3.22) Storytel published their first Finnish language audio drama in August 2022 which comprise a new version of George Orwell's book Year 1984 with three actors in lead roles.

¹⁵ Yle produces annually one major audio drama and number of smaller audio drama productions. In the CE Audio Report para 3.22, it is noted that the domestic companies are unsure whether it would be economically viable for them to do major audio drama productions if Yle did not produce these.

Yle does not publish or distribute content on social media but uses social media for information purposes.¹⁶

Live events

17. The Complainant claims that Yle organises live concerts with free entrance where popular artists known from commercial events perform.¹⁷ In fact, Yle organises one live concert annually, together with the municipality where the event is held and with free entrance.¹⁸ Organising such one event cannot be seen as a disproportionate investment in any regard and it is included in the public service remit of Yle which provides for production and maintaining of “*Finnish culture, art and inspiring entertainment*”.¹⁹ Other live events organised by Yle include the Yle’s Radio Symphony Orchestra which have no free admittance but are broadcast on radio, Yle Areena, and sometime on television. Moreover, Yle broadcasts other free-of-charge events such as the New Years’ concert organised by the city of Helsinki.

Co-production with international distribution

18. The Complainant criticizes Yle’s co-production of the Finnish-language drama series Dance Brothers with a production company because Netflix is also participating in that production. Sanoma does not elaborate on why this particular example should be considered as an expansion being able to cause any distortive effects on the market.²⁰ Dance Brothers production was developed in cooperation with a production company like any domestic production.²¹ Such content falls within Yle’s public service remit to produce comprehensive content for all audiences, which is possible also in collaboration with international distribution companies. This reflects the sixth point of Section 7 of Yle Act to “*promote cultural interaction and maintain programme offering intended abroad*”. As explained before, Yle is

¹⁶ Yle Service Description, page 32.

¹⁷ Ibid., p. 4.

¹⁸ According to Yle, radio channel YleX aimed at younger audiences organises YleXPop concert which is also broadcast live on Yle Areena and later on Yle’s linear broadcasts. YleXPop is organised every year in different location.

¹⁹ Section 7 of Yle Act.

²⁰ Sanoma Presentation, p. 4.

²¹ The principles of Yle’s (domestic) content acquisition are described in CE VOD Report Box 2.

no way forbidden from collaborating with third parties and has been instructed to acquire domestic content from production companies operating in Finland.²²

Yle's funding

19. The Complainant notes that Yle receives guaranteed funding while local commercial TV companies face increasing competitive pressure.²³ The funding received by Yle is proportionate to Yle's remit. A comparison of different domestic commercial operators' and Yle's budgets does not reveal any causation between Yle's budget and media plurality. Sanoma's argument ignores the presence of multinational players and does not reveal any potential disproportionate impact of Yle's public broadcasting activities on competition, within the meaning of the Amsterdam Protocol²⁴ and the EU courts' judgements²⁵. Moreover, the Complainant's comparison is factually flawed as VAT-exclusive revenues are compared with Yle's VAT-inclusive budget.

3. The definition of Yle's remit is sufficiently clear and precise and reflects the proper application of the EU State aid rules

20. Sanoma claims that recent changes to the Yle Act do not address Sanoma's concerns, and the amended Yle Act does not define VOD or online services in a sufficiently clear and precise manner. Therefore, according to Sanoma, the Yle Act should be further amended.²⁶

21. Sanoma's "concerns" are based on the wrong interpretation of the EU State aid rules applicable to broadcasting. There are no manifest errors in the definition of Yle's public service remit as the contested services clearly fall within Yle's public mandate to serve the

²² CE VOD Report, p. 23. See also Yle's strategy where it is stated that "With a lot of co-operation abroad, Yle's ways of working go beyond national borders. Moreover, our internationally acclaimed content and services make Finland known abroad." (<https://yle.fi/aihe/strategy>).

²³ Ibid., p. 5.

²⁴ 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*).

²⁵ Judgement of the General Court of 11 July 2014, DTS Distribuidora de Televisión Digital, SA v European Commission, T-533/10, ECLI:EU:T:2014:629 and judgement of the Court of Justice of 10 November 2016, DTS Distribuidora de Televisión Digital, SA v European Commission, C-449/14 P, ECLI:EU:C:2016:848.

²⁶ Sanoma Presentation, p. 6 and 8.

"social, democratic and cultural needs of society" in accordance with the Amsterdam Protocol and the EU State aid rules.²⁷

22. The EU State aid rules do not provide for any specific provisions that EU Member States should implement in their national legislations concerning public broadcasting. There is no EU regulation or directive that harmonizes the definition of public service media remit as it would be contrary to the Amsterdam Protocol, which is a part of the Treaty on the Functioning of the European Union.
23. Sanoma uses some selected country examples and incorrect inferences made from the general EU state aid rules and Broadcasting Communication, which only consolidates the Commission's practice²⁸, in order to argue that the Finnish legislation should be changed and implement a very restrictive approach to public broadcasting argued by Sanoma. This is obviously incorrect.
24. Further to the above, Sanoma's arguments that the Finnish regulatory framework does not include any additional instrument defining the public service remit, which exists in "*many other jurisdictions*"²⁹ is obviously incorrect as not the form of the regulatory framework is relevant, but its content. Sanoma's position seems to be that EU Member States' national regulations should be harmonized based on some selected country examples.
25. As previously explained, the Member States have broad discretion in defining the public service remit in order to ensure that the entire population benefits from services that provide quality and diversified content. At the same time, the public service remits must allow public service media to innovate and respond to the evolving needs of the audience and the technological progress.³⁰

²⁷ First Finland Response, paragraphs 39-49.

²⁸ See Broadcasting Communication, paragraph 8 is clear that the Broadcasting Communication only consolidates the Commission's practice in a "future-oriented manner based on the comments receive in the public consultations". It is "without prejudice to the application of the internal market rules and fundamental freedoms in the field of broadcasting. In the absence of any EU Regulation of directive, Article 107 TFEU and Amsterdam Protocol, as interpreted by the EU courts remain the only EU State aid rules limiting the Member States' freedom in the field of public broadcasting."

²⁹ Sanoma Presentation, p. 10.

³⁰ First Finland Response, paragraphs 32-33.

26. The General Court recognized that Member States have discretion in defining public service remit, which allows for a wide and broad definition based on qualitative and not quantitative criteria, allowing the public broadcaster to achieve Amsterdam Protocol's objectives:
- “definition chosen by the Danish authorities is broad since, being essentially qualitative, it leave the broadcaster free to establish its own range of programmes. (...) TV2's mandate is perfectly clear and precise: to offer the entire Danish population varied television programming which aims to provide quality versatility and diversity”.*³¹
27. The Broadcasting Communication expressly acknowledges the above principles as a qualitative definition is consistent with the objective of fulfilling the democratic, social and cultural needs of a particular society. Public service remit may also *“reflect the developments diversification of activities in the digital age and include audiovisual services on all distribution platforms.”* The Commission's role is limited to checking for manifest errors.³²
28. As stated previously, a general and wide Yle's public service 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. The Broadcasting Communication allows the remit to be qualitative, based on objectives and public interest goals. There is no doubt as to whether contested Yle's activities were intended by Finland to be included in the public service remit as it has been explained previously.³³ Further, Yle's strategy is available on Yle's website in a transparent way and different stakeholders are able to review Yle's plans within its remit.³⁴
29. Sanoma repeats its arguments that the Yle Act is allegedly not *“as precise as possible”*.³⁵ As explained, Sanoma's arguments are incorrect and ignore the wider legal context. The *“clear*

³¹ First Finland Response, paragraph 34 and Judgement in joined Cases T-309/04, T-317/04, T-329/04 and T-336/04 *TV2/Denmark v Commission*, paragraph 117.

³² Broadcasting Communication, paragraphs 39, 44 and 47.

³³ Fourth Finland Response, chapter 3.

³⁴ The current Yle's strategy states that: “As we move towards a digital production and publishing environment, we ensure that we continue to serve all people in Finland during and after the transition. Among other things, this transition means that we increasingly make content available in Yle Areena and our mobile services.” Yle's most recent strategy, which was published in May 2020, is available at: <https://yle.fi/aihe/strategy>.

³⁵ Sanoma Presentation, p. 11, 14-15.

and precise” requirement does not mean purely technical description, which, even if possible, would limit the editorial independence of public service media and their ability to use new technologies contrary to the universality obligation.³⁶

30. Section 7 of Yle Act includes a broad definition based on qualitative criteria, which is consistent with Amsterdam Protocol and the EU State aid rules applicable to public broadcasting. Each EU Member State has a discretion to define the public service media remit within the general EU State aid framework. Only in that way Member States may acknowledge local traditions and cultures. In addition, the use of new technologies was addressed and included in the definition of Yle’s remit already in 1993 and discussed in various amendments of the Yle Act.³⁷
31. The Complainant also repeats its earlier allegation regarding the similarity between Yle Arena’s VOD content and content provided by commercial broadcasters.³⁸ The Finnish competent authorities have in the Fourth Finland Response and its accompanying CE VOD Report addressed the Complainant’s arguments extensively. The Complainant’s approach to classify certain content as “*commercial*” and consequently distortive on the basis of the genre type alone is arbitrary and lacks any economic foundation.³⁹ Yle’s content differs from that of commercial operators and Yle’s content acquisitions are guided by Yle’s principles aimed at fulfilling its public service remit.⁴⁰ The Court of First Instance rejected arguments that public service remit should be defined through a comparison to the offer of commercial broadcasters.⁴¹ The available evidence shows limited overlaps between Yle and commercial providers competing for the same content, and there is no evidence suggesting that Yle would have consistently and disproportionately used its funds to acquire content sought by commercial providers.⁴²

³⁶ Fourth Finland Response, paragraphs 19-22.

³⁷ Fourth Finland Response, paragraph 23.

³⁸ Sanoma Presentation, p. 4

³⁹ Fourth Finland Response, Section 4.2.1. CE VOD Report, paras 2.20-2.38.

⁴⁰ CE VOD Report, p. 23, Box 2.

⁴¹ Judgement of the Court of First Instance (Fifth Chamber) of 22 October 2008, TV 2/Danmark A/S and Others v Commission of the European Communities, Joined cases T-309/04, T-317/04, T-329/04 and T-336/04, ECLI:EU:T:2008:457, para 123.

⁴² CE Report, p. 10 and paras 6.24 – 6.37.

4. VOD and online educational materials are not *significant new services* for which a specific prior evaluation was legally required

32. Yle Areena is not a new service as it was launched in 2007 and it was driven by changes in consumer habits, which could not be addressed by “traditional” broadcasting.⁴³ The vast majority of Yle Areena content is also broadcasted on Yle TV channels.⁴⁴ Yle has been offering educational content since 1926 and Yle’s very limited offering of online educational materials addresses changes in the consumers’ needs driven by the continuous digitalization of the Finnish society and increasing reliance on the Internet.⁴⁵
33. Yle Areena and online learning materials are within Yle’s remit. Those services constitute broadcasting or are strongly based on Yle’s broadcasting activities.⁴⁶ As explained, the “traditional” linear technologies no longer reach wide audiences as they used to. In order to fulfill its mission of providing diversified and versatile quality content to all Finns, Yle is just using new technologies for broadcasting, in accordance with the Amsterdam Protocol and the technological neutrality principle.⁴⁷
34. The developments in the audiovisual market and the transition from linear to non-linear content has been described in detail in Second Finland Response.⁴⁸
35. As previously explained, Yle’s VOD and online learning services are not “*significant new services*” as Sanoma claims.⁴⁹ Those services have been developed gradually and only constitute broadcasting activities through the use of new technologies. Sanoma’s arguments ignore the legal and technological context of those services and the developments in the audiovisual market which have been explained in detail in previous Finland’s submissions.⁵⁰

⁴³ First Finland Response, paragraphs 17-21, Second Finland Response, paragraphs 32-42, Fourth Finland Response, paragraph 29.

⁴⁴ First Finland Response, paragraph 23.

⁴⁵ First Finland response, paragraph 27-29.

⁴⁶ Fourth Finland Response, paragraph 25.

⁴⁷ First Finland Response, paragraphs 77-95.

⁴⁸ Second Finland Response, paragraphs 7-23.

⁴⁹ Sanoma Presentation, p. 13.

⁵⁰ Second Finland Response paragraphs 7-23; Fourth Finland Response, paragraphs 31-136.

36. A prior evaluation is not a strict legal requirement as it is not envisaged in the EU State aid rules. However, even though Yle's VOD is just a new distribution method of broadcasting that has been part of Yle activities for 15 years, it was covered by the prior evaluation procedure.⁵¹
37. It remains unclear whether the Complainant's concerns would be addressed by a prior evaluation, direct reference to VOD services in the Yle Act or only by some specific restrictions.⁵² As explained, there is no justification for any catch-up/catalogue restrictions in relation to the VOD content.⁵³ There are no grounds for the Sanoma's arguments that Yle's broadcasting activities concerning on-demand offering can disproportionately distort competition on the market.⁵⁴ The same applies to Yle's very limited educational materials offered through online means.⁵⁵

5. The Complainant's allegations concerning Yle's strategic expansion are incorrect

38. The Complainant presents a timeline on which Yle Arena's and Yle learning services' developments are depicted.⁵⁶ The Complainant alleges that Yle Arena is the main platform for Yle broadcasting and implies that Yle Arena is increasingly distortive to competition. As demonstrated in the previous responses of the Finnish competent authorities and the accompanying CE Report, Yle Arena does not distort competition disproportionately and Yle's television channels remain the platform through which Yle reaches its largest audiences.⁵⁷ Yle's services are developed in response to the changing needs of the audiences in order to ensure that Yle continues to fulfil its public service remit going forward.
39. The Complainant speculatively and without any grounds claims that Yle is planning on expanding learning services to commercial markets. As described in the Third Finland Response, Yle is in the process of updating its strategy on Yle Oppiminen and Yle has no plans to expand its services beyond the existing scope. Any changes to the service will reflect

⁵¹ Second Finland Response, paragraphs 43-54.

⁵² Sanoma's position seems to be also shifting as it initially argued for a 7-days catch-up limitation, but currently seems to rely more on the examples of 12-month catch-up restriction – see Sanoma Presentation, p. 42.

⁵³ Second Finland Response, paragraphs 55-60

⁵⁴ Second Finland Response, paragraphs 108-124.

⁵⁵ Second Sanoma Response, paragraphs 99-107.

⁵⁶ Ibid., p. 25.

⁵⁷ On distortion of competition see e.g., Second Finland Response, para 108 and 124; Fourth Finland Response, para 165; and CE Report, pp. 8-10. On Yle's television channels, see CE Report, para 4.14 and Figure 3.

changes in the operating environment of Yle. Yle continues to focus on life-long learning and supporting the overall learning needs of the society, and the financial resources used for learning content will remain at current levels.⁵⁸

40. The example provided by the Complainant on Yle expanding its learning services offering is anecdotal and does not indicate that Yle is planning to expand its service to compete with the commercial providers. Yle Abitreenit has existed for more than 40 years and does not constitute a new service.⁵⁹
41. The Complainant frames Yle as a “*substantial player in the online learning service domain and therefore, limits potential areas for commercial players*” and uses Yle’s Abitreenit as an example of such service. In the Second and Fourth Finland Responses it has been demonstrated how the Complainant’s allegations on learning materials are incorrect, lack foundation and do not reflect the market reality.⁶⁰
42. The Complainant argues that Yle’s services are widely used in schools and notes that while Yle does not provide “*curriculum-based material (= traditional full textbook and workbook material)*”, Yle in effect does so by offering “*supporting services for various curriculum-based learning goals and for teaching/learning support*”. First, the limited learning content is part of Yle’s public service remit, and Yle offered learning content already in the 1960s.⁶¹ Second, free educational materials that supports learning are offered by a wide range of public entities, NGOs, and teachers themselves. Third, the “wide use” is a general and rather vague statement that does not show how different materials are used e.g., in relation to time or number of lessons on which teachers use specific materials.
43. The Complainant refers to its survey, showing that Yle Abitreenit is currently used in schools and has high brand recognition, as evidence of the alleged competitive distortions. Aside from the Complainant not explaining how the survey was conducted, the results shown in the Presentation do not contain evidence suggesting that Yle’s materials would be close

⁵⁸ Third Finland Response, Chapter 5.

⁵⁹ Fourth Finland Response, para 114.

⁶⁰ Second Finland Response, paras 106-107; Fourth Finland Response, paras 112-125; CE Report, Chapter 7, especially paras 7.10 – 7.35.

⁶¹ Second Finland Response, paras 99-105; Fourth Finland Response, paras 110 and 117.

substitutes to commercial services and would consequently crowd out commercial providers. Moreover, it is not surprising that Yle Abitreenit is recognized by name by the vast majority of teachers, as Yle (including its different sub-brands) is continuously amongst the most respected brands in Finland.⁶²

44. The survey presented by Sanoma does not show how, and to what extent, Yle Abitreenit is used at schools. In particular, as set out in the CE Report, Yle Abitreenit makes past examination papers available with solution keys and thereby provides material a student can use for self-preparation for a future examination.⁶³ The Complainant does not appear to note that the same material is freely available to students through their schools, and the examination solutions are available to teachers directly from the matriculation board's website. The Complainant does not show that students or schools would be willing to pay for the exams and solution keys in the absence of Abitreenit, or that commercial providers would be able to sell access to these materials.
45. Further, as explained in the CE Report, many commercial providers of matriculation examination preparation services have increased their revenues substantially over the recent years, and the market developments are not consistent with the notion that Yle crowds out commercial providers.⁶⁴ The Complainant has not provided any evidence to suggest otherwise.
46. The Finnish National Agency for Education conducted a survey in 2019 on learning materials among teachers and school officials which shows that teachers use several learning materials, sources, methods and tools in parallel. Yle's provision of online learning materials constitutes a realization of Yle's public service remit, supports learning, enriches teaching and promotes self-development.
47. There should be no doubt that educational content has been a part of public service media remit for many decades. There should be no question whether there is an "uncontrolled expansion" of Yle's online learning services as Yle's offering has not been steadily growing.

⁶² For instance, Yle Arena and Yle were ranked as Top 10 brands in a 2022 study, see <https://yle.fi/aihe/a/20-10003216>.

⁶³ CE Report, para 7.1—7.12.

⁶⁴ CE Report, paras 7.33-7.35.

Yle does not have a plan to create an offering that is similar to the offering of commercial operators.⁶⁵

48. The evidence brought forward by Sanoma at best proves concurrent use of Abitreenit and commercial learning materials but does not provide any information on whether Abitreenit and commercial learning materials are substitutable with each other. No evidence suggests that Yle's learning services, and Abitreenit in particular, would be likely to give rise to any considerable distortions to competition.⁶⁶

6. Compass Lexecon does not show distortion from Yle's VOD service

49. The Sanoma Presentation contains further clarifications to the allegations put forward in the expert report by Compass Lexecon (**CL**). CL provides a new estimate of Yle's spending on VOD services which appears to be broadly in line with the previous estimate reported in CE Report and thereby confirms that the Complainant substantially overestimated Yle's spending in the Complaint. CL appears to insinuate that Yle invests disproportionately in content which CL considers "*general entertainment*" and consequently not part of Yle's public service remit.

50. The Fourth Finland Response and CE VOD Report have previously addressed CL's notion of "*general entertainment*" and explained why such genre classification is not suitable for determining whether content contributes to fulfilling Yle's public service remit since content regardless of its genre classification contributes to democratic, social, and cultural needs as required by the Amsterdam Protocol.⁶⁷ Furthermore, the shares of viewing do not correspond to spending of Yle in specific genres.⁶⁸ Also, as noted above, the Court of First Instance has dismissed the arguments that the public service remit should be determined through a comparison to commercial broadcasters' services.

51. CL also refers to the estimated revenue impacts of Yle Areena based on its interpretation of the CE survey and claims that "*Sanoma's VOD revenues were [REDACTED] than in the*

⁶⁵ See also Fourth Finland Response, para 134.

⁶⁶ CE Report, Chapter 7, and Table 10.

⁶⁷ Fourth Finland Response, subsection 4.2.1 "VOD entertainment should not be restricted"; CE VOD Report, paras 2.26 and 2.27.

⁶⁸ Fourth Response, paragraphs 118-119.

absence of the Areena Service".⁶⁹ As shown in the CE VOD Report and explained in the Fourth Finland Response, CL misuses the CE survey.⁷⁰ CL's impact analysis is based on an unfounded counterfactual which is not consistent with Sanoma's complaint (i.e. a scenario where Yle Areena would not exist at all). Further, even aside from an inappropriate counterfactual, CL makes assumptions that do not stand up to scrutiny and result in a substantial exaggeration of CL's estimates of "*forgone revenues*". The CE VOD Report illustrates the implications of CL's assumptions.⁷¹

52. CL describes the methodology used for identifying VOD-only content on Yle Areena. As explained by CL, the conclusions are based on only 25% of content available on Yle Areena on a given date.⁷² Such limitation of data alone may result in considerable distortion of the results. Yle's publishing data for 2021 shows that in 2021 out of 8.483 programs labelled as "News" only 7 were Yle Areena or less than 0.1 percent – in contrast with 86 percent claimed by CL.⁷³ For all content classified as Drama in Yle's publishing system, five percent were Yle Areena only in 2021 – compared with CL's 9-10 percent. These two examples highlight the distortions caused by CL's methodology and show why CL's analysis as such is unreliable. In total out of all titles published in 2021, approximately 3 percent of content on Yle Areena was Yle Areena only and in 2020 it was approximately 4 percent.⁷⁴
53. CL also discusses whether content is premiered first on Yle Areena or Yle's linear TV channels. Due to flaws in CL's methodology described above, such findings should be disregarded. Moreover, as explained in earlier Finland Responses, Yle Areena is developed in response to changing needs of the Finnish audiences driven by the non-linear consumption of audiovisual content by the younger generations.⁷⁵

⁶⁹ Sanoma Presentation, p. 34.

⁷⁰ Fourth Finland Response, para 160; CE VOD Report, Chapter 3

⁷¹ CE VOD Report, Table 3.

⁷² Sanoma Presentation, p. 36.

⁷³ Genre classification used by CL does not directly correspond the genres used in Yle's publishing system making the comparison illustrative.

⁷⁴ Third Finland Response, Section 1; First Finland Response, paragraph 23.

⁷⁵ See e.g., Second Finland Response, Chapter 2; Fourth Finland Response, para 16 and Section 4.1.3.

54. The last question answered by CL relates to availability of content on Yle Areena. There are no regulatory constraints put in place for content availability on Yle Areena, but as demonstrated in the Third and Fourth Finland Response, content rights acquired by Yle set limits to content availability and content on Yle Areena has median availability of 90 and 180 days, for acquired and own content respectively.⁷⁶ The methodology used by CL most likely results in the biased estimates (36.8% in terms of title duration) and in all, out of content published in 2021, less than 10% had unlimited availability on Yle Areena.⁷⁷ Of this, more than half were either factual or current affairs content. Thus, CL's opinion is based on biased methodology and should be disregarded as such.
55. Finally, CL's comparison between Yle Areena and BBC iPlayer is based on selective description and misrepresents the regulation on the BBC iPlayer.⁷⁸ More recently, citing the changing audience expectations, the BBC has set out a new proposal for iPlayer service and is currently undertaking Public Interest Test in recognition of legitimate stakeholder interest.

7. There is an effective and independent supervision over Yle

56. Sanoma argues that the supervision system over Yle's activities is insufficient, and, as a new argument, that the Administrative Council is not politically independent.⁷⁹ Sanoma's position is incorrect as it is within the competence of the Member State to choose the mechanism for effective supervision by a body, which is "*effectively independent from the management of the public service broadcaster*".⁸⁰
57. The Administrative Council is effectively and functionally independent from the management of Yle and has adequate capacity and resources for regular supervision⁸¹. The Administrative

⁷⁶ Third Finland Response, Section 2 and Fourth Finland Response, paras 63 – 69.

⁷⁷ Measured in total content availability as in Third Finland Response.

⁷⁸ CE VOD Report, Chapter 4.

⁷⁹ Sanoma Presentation, p. 19.

⁸⁰ Broadcasting Communication, paragraph 54.

⁸¹ The Presentation misquotes the Broadcasting Communication by replacing "would only seem" with "is" in the following: "supervision **would only seem** effective if carried out by a body effectively independent from the management of the public service broadcaster." The Broadcasting Communication indicates that even if a body is potentially not fully independent from the company's management, it does not exclude that the supervision can be effective.

Council's independent status is protected by a number of factors. It has a balanced and pluralistic composition and its structure is transparent and represents interests of the Finnish society. The supervision over Yle ensures both the necessary editorial independence and public accountability without creating a risk of over-politization or undue influence over Yle.⁸²

58. Sanoma's references to the Media Pluralism Monitor (MPM) non-empirical study have no direct relevance to the application of the EU State aid rules.⁸³ The effective functional independence of Yle is indirectly noted by MPM as its Country Report 2021 recognized that "*Finland's light-touch approach has mostly led to desirable outcomes*".⁸⁴ As explained above, the Member States have discretion to create their own regulatory framework for public service media, which reflects local traditions and culture. Yle provides an important value to the Finnish society, which is reflected by very high appreciation of Yle's activities across all Finns and growing Yle's societal importance and personal relevance.⁸⁵ Those empirical findings cannot be replaced by some vague and selected references to the MPM.

⁸² Fourth Finland Response, paragraphs 137-146.

⁸³ Sanoma Presentation, p. 19. MPM only tries to measure various risks across various countries. Finland's area-level risk scores throughout the MPM instrument fall in and near the medium risk range. The risk score does not mean that there are actual problems.

⁸⁴ 2021 MPM, Country Report Finland -

https://cadmus.eui.eu/bitstream/handle/1814/71945/finland_results_mpm_2021_cmpf.pdf?sequence=1&isAllowed=y.

⁸⁵ Second Finland Responses, paragraphs 61-67.