Competition Merger Brief

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SES/Intelsat – Merger Control in a Changing Satellite Market

Gianni De Stefano, Patricia Oliveira, Ariti Skarpa, Johannes Waller

Introduction

On 10 June 2025, the Commission unconditionally approved the approximately EUR 2.8 billion acquisition of Intelsat Holdings S.à r.l. ('Intelsat', Luxembourg and United States) by SES S.A. ('SES', Luxembourg). This case is an example where the Commission performed a dynamic assessment in an industry undergoing a transition characterised by the emergence of new players and alternative technologies.

Both SES and Intelsat are global satellite network operators ('SNOs')[1] that own and operate geostationary Earth orbit ('GEO') satellites.[2] Through their GEO satellite fleet, SES and Intelsat supply satellite capacity[3] to third parties at the wholesale level. In addition, they offer satellite services[4] to customers across a range of industry segments.

Market context

SNOs can offer satellite capacity for 'one-way' or 'two-way' satellite communications. One-way satellite communications are used for broadcasting purposes (e.g., television and radio) which require the same signal (i.e., the same audiovisual content) to be distributed over a wide area. Conversely, two-way satellite communications allow end-to-end exchanges of data among two or more terminals. Two-way satellite communications are employed for various applications, including internet and cloud access, government connectivity, aviation and maritime. [5]

In the satellite communications industry, several SNOs (including SES and Intelsat) are vertically integrated. Vertically integrated SNOs do not only supply satellite capacity at the wholesale level but also combine their satellite capacity with an array of additional services to offer comprehensive satellite solutions to end-customers. Such value-added services include, for instance, Earth technological equipment and infrastructure, invoicing tools, and customer support.

Notably, as technology evolves, GEO satellite operators face new competitors and innovations, especially the rapid rise of low Earth orbit ('LEO')[6] constellations, as well as alternative terrestrial communication technologies.

Transaction rationale

The stated rationale of the transaction was to allow SES and Intelsat to increase coverage and resilience by optimizing their GEO satellite offerings and exploiting operational synergies, as well as to

In a nutshell

Despite high combined market shares in certain segments, the Commission cleared the deal considering that sufficient competitive constraints from existing and new satellite operators, but also from alternative technologies will remain.

The Commission assessed the competitive dynamics of the satellite-communication industry beyond static market shares. For example, LEO satellites are offering a low-latency, high-speed alternative that puts traditional GEO satellite operators on alert (in particular in relation to two-way satellite communications). In addition, terrestrial alternatives to satellite distribution – such as OTT services via fibre networks – are increasingly preferred for media distribution (over traditional one-way satellite capacity) due to their flexibility and cost-effectiveness.

[1] SNOs own and manage their own satellite fleets and lease satellite capacity to third parties.

[2] GEO satellites circle Earth above the equator from west to east following the Earth's rotation by travelling at exactly the same rate as Earth. This makes satellites in GEO appear to be 'stationary' over a fixed position on Earth. In order to perfectly match the Earth's rotation, the speed of GEOs should be about 3 km per second at an altitude of 35786 km.

[3] Satellite capacity is the 'space' available on a satellite to carry communications (such as TV channels, internet, voice, or data traffic) that a satellite can provide to its users (telecom operators, broadcasters, governments, etc.).

[4] Satellite services are satellite solutions consisting of satellite capacity and associated services needed to reach end-customers (e.g., Earth stations and terminals).

[5] The Commission has previously investigated the market for 'two-way' satellite communications in the Commission decision of 25 May 2023 in case M.10807 – *Viasat / Inmarsat*.

[6] LEO satellites are positioned c. 500-2 000 km above the ground. Since LEOs orbit closer to the Earth's surface than GEOs, the latency of LEOs is lower.

remain competitive against emerging LEO satellite operators and terrestrial communication technologies.

Horizontal overlaps

The Commission investigated the impact of the transaction on the markets for the supply of 'one-way' and 'two-way' satellite capacity, and possible narrower market segments thereof, globally and in the EEA (including regions within the EEA as regards the supply of 'one-way' satellite capacity for media broadcast).[7]

In relation to the supply of one-way satellite capacity, the Commission considered, but ultimately left open, a potential segmentation by orbit (particularly GEO or LEO), satellite type (wide-beam or high-throughput satellites),[8] frequency band (namely Ka-, Ku- and C-band), orbital locations or distribution types (direct-to-home, free-to-air or cable). The exact geographic scope was also left open. The Commission conducted its assessment on the basis of global, EEA-wide and narrower regional markets (namely Western Europe, Eastern Europe, Central-Eastern Europe and Nordic Europe). The combined market share of SES and Intelsat in the market for one-way satellite capacity, and certain potential segments thereof, globally, in the EEA, in Western Europe and/or in Eastern Europe, was mostly between 20% and 50%. The combined shares were particularly high (between 70-80%) in the overall market for one-way satellite capacity, and the potential segment for free-to-air and cable distribution (combined), in Western Europe.

In relation to the supply of two-way satellite capacity, the Commission examined a potential sub-segmentation by orbit (particularly GEO or LEO), satellite type (wide-beam or high-throughput satellites), or frequency band (namely Ka-, Ku- and C-band), but ultimately left open the exact product market definition. The position of the merged entity in these potential narrower sub-segments, both globally and in the EEA, is generally moderate (20-40%), although in a limited number of sub-segments comprising traditional GEO satellites it exceeds 40%.

Notwithstanding these high combined market shares, the Commission authorized this transaction based on a combination of factors: sufficient remaining established GEO competitors;[9] limited increment (in 'one-way' satellite capacity); sufficient spare satellite capacity; and existing buyer power. Furthermore, most respondents to the market investigation expected neutral effects on competition.

In addition to the above, the Commission also took into consideration future market developments in the satellite-communication industry and assessed whether recent technologies and/or new competitors would exercise additional competitive constraints on the merged entity post-transaction.

This is in line with the case M.10807 - *Viasat / Inmarsat,* which was adopted a couple of years prior to this transaction, where the Commission noted that the '*evolving needs of passengers and continuously improved rival offerings constantly shift the key parameters of competition*'.[10]

New technology developments: the role of terrestrial alternatives

In the market for the supply of 'one-way' satellite capacity, the Commission analysed the evolving interaction between satellites and terrestrial infrastructure for media distribution. In particular, the Commission found evidence that a considerable competitive constraint on the merged entity, and its peer GEO satellite operators, stems from terrestrial broadcasting technologies that enable alternative distribution models for audiovisual content.

Customers in the media segment (namely, broadcasters) are increasingly choosing to deliver media content through terrestrial means, as a replacement of satellite distribution, or (often) alongside satellite distribution. Terrestrial alternatives to satellite broadcasting primarily involve fibre-based networks combined with OTT (over-the-top)[11] services.

OTT services represent a new wave in content distribution, allowing media content to be delivered over the Internet without the need for traditional cable, broadcast, or satellite TV platforms. OTT is technology-agnostic: it can be transmitted via either terrestrial or satellite broadband. However, in practice, the most significant competitive pressure arises when OTT services are delivered over terrestrial fibre networks, which provide high-capacity, low-latency connections. This combination allows media content to be streamed directly to end-users on smartphones, smart TVs, tablets, and computers, bypassing traditional satellite distribution channels. As more consumers turn to internet-based streaming services like Netflix, YouTube, Hulu, Disney+, and Amazon Prime Video — often accessed through terrestrial fibre

[7] Within the market for the supply of satellite services, the Commission examined a potential segmentation on the basis of the different industry sectors to which satellite services are offered, namely aviation, maritime, government and fixed data industry sectors. However, in such industry sectors, either the parties' activities do not horizontally overlap, or their combined market position is very limited, so that no competition concerns can plausibly arise.

[8] Traditional wide-beam satellites deploy a single beam across a wide geographic area. High-throughput satellites deploy multiple narrow spot-beams (instead of a single wide-beam) that re-use frequencies, so that a single satellite can deliver multiple times the data throughput of wide-beam satellites.

[9] In particular, the Commission found, based on the market investigation, that there are several existing GEO satellite operators that will continue to exert sufficient competitive pressure on the merged entity post-transaction (for instance and depending on the respective markets, Eutelsat, Hispasat, ArabSat/Hellas Sat, and Telesat).

[10] Case M.10807 - *Viasat / Inmarsat* concerned the supply of broadband internet services on board aircrafts.

[11] The term implies that these services go 'over the top' of the infrastructure controlled by traditional telecom and cable operators, leveraging existing internet connections to provide media and entertainment content to users.

networks —, the demand for conventional satellite distribution is declining.

Fibre networks constitute the physical infrastructure that enables this shift, offering high-speed, high-reliability connectivity in areas where they are deployed. While one-way satellite distribution remains unmatched in geographic reach, the growing penetration of terrestrial fibre infrastructure, coupled with the widespread adoption of OTT services, is eroding the reliance on traditional one-way satellite broadcasting.

For example, in its decision the Commission noted that '*not only is a fixed internet connection with a sufficient speed to use OTT services available to the vast majority of households in the EU already, but, in line with the trends of previous years, this number will continue to increase over the next few years. As the Commission also has to take future market developments into account […], it finds that IP-based terrestrial distribution is already a significant competitive constraint for one-way satellite capacity (for media purposes) and will become an even greater constraint in the foreseeable future*'.

Market entry by new players: LEOs

The results of the Commission's investigation indicated that, in the market for the supply of 'two-way' satellite capacity, GEO operators face increasing competition from emerging LEO constellations, such as SpaceX's Starlink, Amazon's Kuiper and Eutelsat's OneWeb.

LEO satellites provide certain advantages over GEOs for two-way satellite capacity, such as reduced latency, lower prices, potential full global coverage, and expanded service capabilities.[12] As such, LEOs present both a catalyst for innovation and a challenge for GEO players.

Against this background, the Commission found that the competitive pressure from services offered by LEO constellations would constrain the merged entity and ensure that it will continue to innovate and maintain competitive prices in order to sustain its market position.

Vertical links

The Commission examined the vertical links arising from the transaction, namely between the upstream supply of two-way satellite capacity, and the downstream supply of satellite services in each of the aviation, maritime, government and fixed data industry sectors.[13]

Vertical integration may raise concerns about the ability and incentive of the merged entity to stifle competition by limiting rivals' access to crucial inputs (so-called 'input foreclosure'). However, the Commission's market investigation showed that the transaction would not lend the merged entity such power.

First, the Commission's market investigation showed that the merged entity would not hold significant market power in the upstream market, as several credible rival suppliers of two-way satellite capacity (including both established GEO companies and emerging LEO players) would continue to competitively constrain the merged entity post-transaction.

Further, the Commission's market investigation indicated that there exists sufficient spare satellite capacity amongst the rivals of the merged entity (which is expected to increase further as a result of the planned entry or expansion of LEO constellations, like US Starlink and Kuiper). Such spare capacity could be used to cover customers' demand in case the merged entity was to refuse or degrade the supply of its satellite capacity.

Finally, technological developments in the industry now facilitate easier switching between satellite service providers. While such transitions can involve complexity and time, they remain feasible, thus preventing the merged entity from exploiting any potential control over satellite capacity to form choke points.

Conclusion

As the satellite communication industry navigates a sea of change, the Commission assessed the transaction between SES and Intelsat taking a forward-looking approach that reflects the evolving competitive dynamics within the satellite industry. The Commission cleared the deal because: the increment by the transaction was limited; sufficient GEO rivals, spare satellite capacity, and buyer power remained; fibre-based OTT technologies and new LEO operators will exercise additional competitive constraints in the future; and no foreclosure concerns arose.

The Commission's assessment underscores a commitment to reflect evolving technological advancements and consumer preferences in its competitive assessment. Ultimately, this decision highlights that the Commission takes a dynamic approach when confronted with dynamic markets that goes far beyond a review of static market shares and current market conditions.

[12] Conversely, GEO satellites offer some advantages such as higher bandwidth that make them more suitable for certain applications.
[13] See also footnote 7.

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UniCredit/Banco BPM – A Shakespearian drama

Fabio Chiovini, Luigi De Sanctis, Henrik Holmstrom, Robbert Jaspers, Louise Riley, Pietro Scarano

Prologue: Two banks, both alike in liquidity, in fair Verona where we lay our scene…

The Italian town of Verona is not only the setting of the well-known tragedy *Romeo and Juliet*, but is also where Italian banks UniCredit and Banco BPM have a significant commercial presence.

Following the launch of a hostile takeover offer worth approximately EUR 11 billion, the Commission cleared UniCredit's proposed acquisition of Banco BPM on 19 June 2025, subject to conditions serving to maintain competition in the markets for deposits and loans to retail customers and Small and Medium-sized Enterprises (SMEs).

UniCredit is Italy's second largest bank and Banco BPM is its third largest bank. Both provide retail, commercial and investment banking as well as asset management, private banking and insurance services in Italy. In addition, UniCredit has operations in Germany and Central and Eastern Europe, and Banco BPM has a small presence in Ireland.

The proposed merger between the two publicly listed companies would have created the largest Italian banking group by number of branches, strengthening UniCredit's presence within the EU.

Act I: From ancient grudge…

The Italian banking sector has traditionally been relatively fragmented. It is characterised by a small number of larger competitors with a significant national presence and a lot of smaller players active only in particular regions or particular product markets. This sector experienced a wave of consolidation last year, with 5 of Italy's 8 largest banks having been involved in acquisitions. MPS acquired Mediobanca, BPER merged with Banco Popolare di Sondrio, Banco BPM acquired asset manager Anima, Banca Generali acquired broker Intermonte, and Ifis bought digital bank illimity.

The Italian government reportedly supported a merger between Banco BPM and Banca Monti dei Paschi di Siena ("MPS"), in which it retains a shareholding. The aim of such a merger would have been to create a third large bank in Italy with the scale to compete effectively against Intesa Sanpaolo and UniCredit. [1] However, UniCredit's takeover offer for Banco BPM disrupted this potential tie up.

Act II: If thou wilt not…

The merger was notified to the Commission on 24 April 2025. On 14 May, the Italian Competition Authority asked the Commission to refer the case to it for review pursuant to Article 9 of the EU Merger Regulation.

The merger only gave rise to affected markets within Italy. However, the Commission has a particular interest in ensuring a coherent approach to the treatment of mergers in the financial services sector, as the maintenance of effective competition in this area is of great importance for the development of the Banking and the creation of the Capital Markets Union and the Savings and Investments Union. In light of these factors, and given that the Commission had already conducted an extensive pre-notification investigation in this case, the Commission exercised its discretion to refuse the referral request in accordance with Article 9(2)(a) of the EU Merger Regulation.

In a nutshell

Although the transaction was ultimately abandoned, the Commission's conditional clearance of UniCredit's proposed acquisition of Banco BPM raised interesting questions about banking market definition in the digital age, how to screen for potential competition concerns in local markets, and how to approach divestment remedies in hostile takeover situations.

Obtaining convincing qualitative and quantitative evidence was key to assessing local market competition and the effectiveness of divestment remedies during a Phase I investigation.

[1] See for example: https://www.reuters.com/business/finance/italy-set-conditions-any-banco-bpm-credit-agricole-deal-finmin-says-2025-09-24/, last accessed 7 November 2025.

Act III: Wherefore art thou, relevant market?

The Commission's investigation in this case found that a network of local branches was still the most important factor taken into account by UniCredit and Banco BPM's customers in their choice of bank, despite the increased use of online banking services. The results of the Commission's investigation showed that the use of online banking services has certainly become more common amongst younger and more tech savvy consumers, for example for transferring money and making payments. However, the investigation found that online services were not yet commonly available or widely used for more complex products. For example, when contracting mortgages or seeking out investment advice, the Commission found that Italian consumers continue to value personalised, face-to-face advice based on their individual circumstances.

However, as the revenue data held by the bank of Italy included only the online services of traditional banks for the purposes of its phase I investigation, the Commission adopted a cautious approach which excluded the services offered by specialist digital only banking providers from the scope of the relevant market

Nevertheless, recognising the evolving competitive dynamics in the sector, the Commission did examine the constraint that online banking services, offered by both traditional banks and purely digital banks, could exercise on UniCredit and Banco BPM as a part of its competitive assessment of the proposed merger.

When it came to defining the geographic scope of the market, the results of the market investigation showed that 80% of the merging parties' customers lived or worked within 20 minutes driving distance of their nearest bank branch. In line with the Notice on Market Definition, the Commission therefore assessed the impact of the merger on local markets by examining competition in these catchment areas.

Act IV: My mind misgives…the Commission's concerns

Although the parties had modest combined market shares at national level, market share data provided by the Bank of Italy showed that they had high combined market shares in some Italian provinces. As the Commission was not able to carry out a detailed assessment of the different competitive constraints operating in each catchment area as a part of its Phase I investigation, the Commission devised a two-stage initial screening process to identify local areas where serious doubts might arise as to the merger's compatibility with the internal market, based on the parties' potential combined market power.

Using market shares as a first indicator of market power, the Commission initially identified all catchment areas where the parties' combined market shares were above 40%, with an increment of 5% or more arising from the merger. Adopting a cautious approach, the Commission applied a lower market share threshold for loans to SMEs as the results of the market investigation had signalled potential concerns in respect of these products.

The second step was to decide whether there were case specific qualitative and quantitative factors present in individual catchment areas which might make it less likely that competition concerns would arise. The Commission's market investigation found that there were unlikely to be competition concerns in catchment areas where there were several alternative competing banks with non-negligible market shares. However, this mitigating factor was not applied in catchment areas where the parties' combined market shares were above a ceiling of either 45% (for loans to SMEs) or 50% (for all other products), following concerns raised during the market investigation.

As a result of this initial screening, the Commission found that the proposed transaction could raise competition concerns in the markets for SME deposits and loans to both retail customers and SMEs in 181 local areas. In these areas, the Commission was concerned that the parties' high combined market shares could give the merged bank excessive market power, potentially leading to higher prices and reduced competition.

Act V: If thou darest, I'll give thee remedy

In order to address the serious doubts identified by the Commission, UniCredit agreed to the divestment of 209 branches in 21 provinces, concentrated in the provinces of Verona, Moderna, Milan, Novara, Bologna and Catania.

UniCredit offered to divest just under 15% of Banco BPM's branch network as part of the package of commitments. Given the hostile nature of the takeover, this was challenging as UniCredit could not provide the Commission with many details about the branches to be included in the divestment package, beyond their location. However, by obtaining information about the branches in question directly from Banco BPM, the Commission was able to conclude that the proposed divestments would address the potential competition concerns identified.

The Commission's investigation found that several small and medium sized banks already operating in Italy would have been willing to purchase the divested branches. This would replicate the pre-merger competitive constraint exercised by Banco BPM in the local areas where concerns were identified, making the merger compatible with the internal market.

Epilogue: For never was a story of more woe?

Despite obtaining merger control clearance from the Commission, there was no happy ending in this case. UniCredit ultimately abandoned its takeover offer for Banco BPM, citing its inability to comply with conditions imposed on the deal by the Italian government.

These conditions were imposed under Italy's "Golden Powers" legislation, which enables it to screen investments in certain

sectors of the Italian economy, including those made by European and Italian companies.

However, the final curtain has not yet fallen in this case. In July 2025, the Commission exercised its powers under Article 21 of the EU Merger Regulation to express concerns about Italy's intervention in the merger. Then, in November 2025, the Commission launched infringement proceedings against Italy under Article 258 of the Treaty on the Functioning of the European Union.

These on-going proceedings have now set the stage for further discussions about the compatibility of the Golden Powers legislation with EU law, in particular in relation to the freedom of establishment, the free movement of capital, and the exclusive competence of the ECB under the Single Supervisory Mechanism.

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Competition Merger Brief

Liberty Media/Dorna Sports – How to avoid going round in circles (on market definition)

Linus Adelt, Leonor Bettencourt Nunes, Christian Grobecker, Joachim Marchandise, Francisco Roman Vaca, Claire Smith

1. Introduction

On 14 November 2024, the Commission received notification of the proposed acquisition of Dorna Sports S.L. ('Dorna') by Liberty Media Corporation ('Liberty Media') for approximately EUR 4.3 billion (the 'Transaction'). Liberty Media operates and owns interests in a broad range of media, sports and entertainment businesses, including the Formula One Group ('Formula 1'). Dorna is an international sports management, media and marketing company that is responsible, among others, for the promotion of the FIM World Championship Grand Prix ('MotoGP').

One of the particularities of this case was an existing precedent concerning the combination of Formula 1 and MotoGP. In 2006, the Commission assessed and prevented the combination of Formula 1 and MotoGP in its *CVC / SLEC* decision.[1] At the time, the Commission found that there could be a separate market for "major motorsports events" in Spain and Italy, where Formula 1 and MotoGP were considered to be each other's closest substitutes. Alternatively, the Commission considered a market for TV rights for "major regular free-to-air sports events" in Spain and Italy that would, however, not include football. Irrespective of the precise market definition, the Commission expressed serious concerns in the *CVC/ SLEC* decision that the joint ownership of the TV rights for Formula 1 and Moto GP would strengthen CVC's bargaining position vis-à-vis broadcasters in Italy and Spain, likely leading to price increases. The case was conditionally approved in Phase I because CVC committed to divest MotoGP to eliminate any overlap with Formula 1.

In the present case, the Parties argued that, in the two decades following this precedent, there have been significant developments that justify considering the relevant markets to be wider. First, unlike in 2006, Formula 1 would now face stronger competitive pressure from other sports rights properties than it does from MotoGP. Second, there would be several sports properties with equal or even greater attractiveness and through-the-year appeal than Formula 1 and MotoGP.

On 19 December 2025, following its Phase I market investigation, the Commission opened an in-depth investigation into the Transaction to investigate in detail whether the Transaction would significantly impede effective competition in the EEA or in any national market within the EEA. The results of the Phase I investigation were insufficient to alleviate the Commission's serious doubts, particularly because broadcasting rights for sports content are highly differentiated, meaning that within the broad spectrum of sports content, substitutability between different sports varies widely.

During the in-depth investigation, the Commission closely assessed substitutability between the Parties' sports properties and other sports, including by conducting a large customer survey. Ultimately, on 23 June 2025, the Commission unconditionally cleared the Transaction.

In a nutshell

Even in highly differentiated markets, market definition is an important intermediate step in the Commission's assessment. However, market definition tends to take a binary, black-or-white / in-or-out view.

Varying degrees of competitive interactions between suppliers of sports licensing rights are not fully reflected when defining the relevant market. Under a narrow product market definition, the resulting shares of the parties might overstate their market power. On the other hand, a wide market definition that leads to low combined market shares also would not reflect market realities.

In *Liberty Media / Dorna Sports*, the Commission looked closely at the substitutability between the broadcasting rights for Formula 1, MotoGP and other sports. For this assessment, the Commission relied on, amongst others, a large consumer survey it commissioned from third-party consultancies.

[1] Commission decision of 20 March 2006 in case M.4066 – *CVC / SLEC*., paragraphs 62-68.

2. Market definition

At the outset of the investigation, the potential impact of the Transaction on competition appeared to depend on the product market definition. However, the Commission's investigation showed that the situation is nuanced, as the market for TV rights for sports content is very differentiated and viewer preferences are highly country-specific, and that regardless of the exact product market definition, the geographic scope of the market for the licensing of broadcasting rights of sports content would be national. The possible delineations of the market ranged from extremely broad, encompassing a wider range of or even all sports, to as narrow as markets for individual sports or categories of sports, including only major motorsports events (i.e., Formula 1 and MotoGP) as was considered in the 2006 decision.[2]

2.1 Delineating differentiated markets

In principle, the main approach used by the Commission to define the relevant product market is assessing the substitutability of products from the perspective of the customer (demand substitution). This exercise is conducted by identifying effective competitive constraints on the products of the undertakings involved, i.e., identifying readily available alternatives to which customers could easily switch. All products that are substitutable would then be part of the relevant product market.[3] For these purposes, the Commission will generally consider factors such as product characteristics, prices, functionalities and intended use to identify the range of possible substitutes.

Where the products in question are highly differentiated—as is the case for broadcasting of sports rights—the Commission may define a relatively broad overall relevant market that includes a continuum of differentiated products, or several separate product markets based on common features of certain products.[4]

2.2 A wide market for the broadcasting of sports rights

To assess customers' views on substitutability of TV sports rights, the Commission primarily considered the views of broadcasters—the direct customers buying the licenses for these rights from the Parties. However, given that broadcasters' decisions on which rights to license are driven by a need to attract audiences, and thus ultimately informed by what their viewers want to watch, the Commission also launched a consumer survey in Phase II to better understand viewers' preferences.

While the results of the market investigation during Phase I were mixed on the question of substitutability and did not exclude the possibility of a narrow market including only motorsports content, the Phase II investigation—which included also more in-depth examinations of broadcasters' approaches to budgeting and procurement as well as a review of the Parties' internal documents—indicated that the markets are wider because Formula 1 and MotoGP face competitive constraints from several other types of sports content. Broadcasters want to offer a variety of sports content to their viewers, not just motorsports, and therefore generally allocate their budgets to sports content as a whole. Ultimately, audience numbers and reach—and the profitability deriving from that—are the main criteria broadcasters consider when acquiring sports rights.

The results of the viewer survey also pointed toward a wider but rather differentiated market for sports rights. The survey focused on understanding viewer preferences in order to assess whether broadcasters may be able to attract or retain subscribers by offering MotoGP instead of Formula 1 and vice-versa. When it came to Formula 1 and MotoGP, the results indicated that they were mostly complementary—viewers and fans of each were rarely interested in the other, but at the same time there were no other real substitutes for either of them.

The results of that survey were also consistent with the results of the market investigation indicating that sports content is part of a broader, highly differentiated market. Moreover, a high proportion of consumers did not think any other sports event was a suitable substitute for either Formula 1 or MotoGP, indicating that the level of substitutability between them is low.

2.3 Possible narrower segments

Nonetheless, the Commission's investigation also indicated that certain narrower segments within a wider market for the broadcasting of sports rights would also be plausible.

First, the investigation showed that broadcasters often distinguish between regular sports (i.e., sport events scheduled on a seasonal basis, such as football leagues) and irregular sports (i.e., sport events that only occur occasionally, such as the Olympics and the FIFA World Cup). Regular sports act as a driver of continuity in viewership and subscriptions.

Second, the Commission's assessment of the annualized value of license fees in each Member State revealed that often the license fees of a very small number of sport events are significantly more expensive than those of all other sports, reflecting their high popularity and therefore attractiveness for broadcasters and platforms. Even if one were to consider that there are no separate markets for individual sports, not all sport events within such a continuum of differentiated products could substitute any other sport event. Because reach is one of broadcasters' main drivers when deciding which opportunities to pursue, an inexpensive sport with limited interest would not be able to replace an expensive event with broader appeal.

Therefore, the Commission considered that the identification of a significant gap between those expensive sports and all other sports in terms of license fee value could indicate a possible segmentation between exceptionally popular or "premium" sports

[2] Commission decision of 20 March 2006 in case M.4066 – CVC / SLEC, para. 30.
[3] Market Definition Notice, point 25.
[4] See e.g. M.7292 DEMB/ Mondelez/ Charger Opco recitals 268 et seq.

and other "non-premium" sports. While the sports belonging to a potential premium segment would differ on a country-by-country basis, in most Member States, a potential premium sports market would include the national football league and the UEFA Champions League. In this context, both Formula 1 and MotoGP would be active in the potential market for regular non-premium sports rights, irrespective of the Member State at issue.

Finally, even though the Commission did not reach a definitive conclusion on market definition, as the exact product market definition was left open, the assessment of the effects of the transaction was run on the narrowest plausible segment according to the results of the investigation. i.e., the licensing of broadcasting rights for all regular non-premium sports content in each of the affected national markets (Czechia, Germany, Italy, Malta, the Netherlands and Spain).

3. Conducting a competitive assessment in differentiated markets

The following elements were particularly relevant when investigating a potential theory of harm on (differentiated) national markets for the licensing of broadcasting rights of (non-premium) sports events.

3.1 Bilateral negotiations and outside options

The licenses for broadcasting rights to sports events, including Formula 1 and MotoGP, are most often acquired following informal bilateral negotiations. On a high level, the Commission considered whether; by removing MotoGP as competing content, Formula 1 would be less constrained in its ability to increase its licensing fees. Economic theory on bargaining models then guided the Commission in considering whether MotoGP constitutes an important competitive constraint. In situations of informal bilateral negotiations, the outside options that are available to both sides of the negotiations (i.e., rights holders on the one hand and broadcasters on the other) play an important role in determining the bargaining outcomes.

In order to identify whether MotoGP could be considered as an important outside option in negotiations for the Formula 1 broadcasting (or vice-versa), the Commission investigated whether broadcasters perceive Formula 1 and MotoGP as substitutes, as well as the degree to which broadcasters consider other sports as suitable substitutes when constructing their portfolio.

This approach was useful to assess the Parties' closeness of competition. This is also reflected in the revised Market Definition Notice which states that "*although market definition remains an important step, analysing how closely suppliers compete may be more relevant than assessing market shares in the competitive assessment of differentiated markets.*"[5]

[5] Market Definition Notice, point 110.

3.2 National markets most likely affected

As indicated above, the Commission could not exclude at the beginning of its Phase II investigation that the relevant national markets may be as narrow as including only major motorsports content. Effectively, this may have meant that the Transaction could give rise to a merger to (near) monopoly in almost all EEA Member States. But even on a market for regular (non-premium) sports content, the Transaction gives rise to six affected markets. The Commission therefore initially focused its investigation on those markets where harm was most likely to occur.

Considering its theory of harm, the Commission assessed that Formula 1 and MotoGP are likely to be viewed as significant outside options in bilateral negotiations in Member States where both sports share comparable popularity, as reflected in the value of the license fee. After all, the threat of a broadcaster to withdraw from licensing negotiations is more credible when it has an equally popular alternative to include in its portfolio.

On this basis, the Commission considered that, if at all, harm was most likely to occur in Spain, where the license fees of the two sports are closest.[6]

3.3 Substitutability in the competitive assessment

As mentioned above, the Commission investigated substitutability in each of the nationally affected markets from both the perspective of viewers and broadcasters.

The Commission used the consumer survey to assess whether broadcasters may be able to attract or retain subscribers by offering MotoGP instead of Formula 1 and vice-versa.

From the survey, the Commission drew three high-level inferences that apply across the national markets.[7] First, a high proportion of respondents consider that no other sport event is a suitable substitute to the Parties' motorsports events. This confirms that Formula 1 and MotoGP are highly differentiated from other sports events. Second, for Formula 1, popular football events appear to be the closest substitutes while, for MotoGP, Formula 1 appears to be the closest substitute while football events are also considered as alternatives. Third, for both Formula 1 and MotoGP there appear to be a broad range of other sport events that are considered as substitutes by at least some viewers. These general inferences suggest that Formula 1 and MotoGP are not close competitors and that other sports may also represent outside options in licensing negotiations.

The Commission's market investigation confirmed that broadcasters themselves may consider Formula 1 and MotoGP as close competitors, but that there are other sports properties that can be considered as substitutes as well.[8] Broadcasters' licensing

[6] The affected markets, by order of the difference between license fees, that the Commission considered were: Spain, Czechia, Italy, Malta, the Netherlands and Germany. See Decision, paras. 427-428.
[7] Decision, paragraphs 372-376.
[8] Decision, paragraphs 377-381.

choices are largely driven by the profitability of a sports property, rather than, for example, by the type of sport or the audience it attracts. In any event, the market investigation did not indicate clearly whether broadcasters consider that Formula 1 and MotoGP attract similar audiences. Finally, the market investigation revealed that most broadcasters allocate their licensing budgets to all sports events or even to all audiovisual content. This suggests that broadcasters may consider other sports properties if they were to lose the licensing rights to Formula 1 or MotoGP.

The Commission's assessment of substitutability between Formula 1, MotoGP, and other sports as set out above was further supplemented with evidence at a national level for each of the affected markets.

3.4 Assessment of the impact on national markets

The Commission was able to conclude that the Transaction will not significantly impede effective competition by taking into account the evidence on substitutability as well as the market structure in each of the nationally affected markets.

In Spain, by way of example, several other regular sports competitions are more popular than Formula 1 and MotoGP in terms of viewership. Several elements indicate that these sports properties, even if they might be part of a potential regular premium sports market, present credible outside options in negotiations for broadcasters. Broadcasters have previously switched between Formula 1 or MotoGP and other regular sports events. In addition, not acquiring a license to either of these two sports remains an outside option as well since several broadcasters and telecoms operators are successful in Spain without having access to either Formula 1 or MotoGP.

Finally, following feedback from the market, the Commission assessed whether the Parties could consider bundling the licenses of Formula 1 and MotoGP. The Commission was able to dismiss these concerns. The Parties explained that agreements between Formula 1 and the individual racing teams make it difficult, although not impossible, for the Parties to engage in a bundling strategy. Importantly, the Commission did not find any evidence in internal documents that the Parties considered engaging in bundling. Ultimately, the Commission did not find any concerns on either the narrowest possible market for the licensing of broadcasting rights for all regular non-premium sports content, or a broader market for all sports content.

4. Conclusion

The Commission's decision in the *Liberty Media / Dorna Sports* case is an example of how, in practice, the Commission may conduct a merger review in the face of highly differentiated markets. It is important to look closely at the substitutability between products at the stage of market definition. However, as the Market Definition Notice explicitly points out, market definition is only one step in the Commission's assessment. In highly differentiated markets it may be more relevant to analyse how closely suppliers compete than to focus on market shares. Finally, this case also serves as an example of a situation where the Commission took into account changes driven by broader trends (on how sports content is being offered and consumed) and their impact on market definition. After an in-depth investigation, the Commission may find that markets have evolved and that a broader product market definition would likely be more appropriate.[9]

[9] Market Definition Notice, point 14.