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Brussels, 11 July 2007

Case No: 13114
Event No: 436086

EFTA SURVEILLANCE
AUTHORITY

By fax (+47 22 83 07 95) and courier

Viasat AS
Care of:
BA-HR Advokatfirma
Att: Mr. Helge Stemshaug
Postboks 1524 Vika
N-0117 Oslo
Norway

Dear Mr. Stemshaug,

Case COM 13114 (former case COM 020.0173) - Viasat/TV2/Canal Digital Norge
(please quote this reference in all correspondence)

I refer to the application of Viasat AS dated 30 July 2001, pursuant to Article 3 of Chapter II of Protocol 4¹ to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice (hereinafter “Surveillance and Court Agreement”), regarding alleged infringements of Articles 53 and 54 of the Agreement on the European Economic Area (hereinafter “EEA Agreement” or “EEA”) by TV2 Gruppen AS and Canal Digital Norge AS.

By this letter I inform you that, pursuant to Article 7(1) of Chapter III of Protocol 4 to the Surveillance and Court Agreement,² the Authority considers that, for the reasons set out below and on the basis of the information in its possession, there are insufficient grounds for acting on your complaint.

¹ As applicable before the entry into force of the Agreement amending Protocol 4 of 24 September 2004 (e.i.f. 20.5.2005).

² As applicable after the entry into force of the Agreement amending Protocol 4 of 3 December 2004 (e.i.f. 1.7.2005). The text of Protocol 4, as amended, is available at:
<http://secretariat.efta.int/Web/legaldocuments/ESAAndEFTACourtAgreement/Documents/Prot4PartI>.

I. FACTS

1 THE COMPLAINT

1. The complaint concerned a distribution agreement between the television channel TV2 AS (hereinafter “TV2”) and the DTH (Direct-to-Home) satellite operator Canal Digital Norge AS (hereinafter “Canal Digital”). The agreement granted Canal Digital the exclusive right to distribute TV2 on Canal Digital’s DTH satellite platform in Norway for a duration of almost 9 years as of 1 May 1998.
2. Viasat argued in the complaint that the exclusive agreement infringed Articles 53 and 54 of the EEA Agreement. Viasat alleged a unique importance of TV2 for Norwegian TV viewers. On that basis, Viasat claimed that the agreement between Canal Digital and TV2 infringed:
 - Article 53 EEA, insofar as the agreement severely restricted competition in the Norwegian DTH satellite market;
 - Article 54 EEA insofar as the agreement represented an abuse of alleged dominant positions. Viasat submitted that TV2 and Canal Digital were both dominant undertakings, which should not be allowed to enter into exclusive agreements.
3. The original complaint also argued that the agreement infringed Article 59 EEA in combination with Article 54 EEA. The Authority considers that this part of the complaint was withdrawn in 2004.³

2 THE PARTIES

4. Viasat is the Norwegian subsidiary of the Swedish media conglomerate MTG. Viasat provides pay-TV services *via* its DTH satellite platform in Norway. In 2005 it had revenues of NOK 565 million.⁴ It also provides TV distribution services to satellite master antenna networks (SMA-TV).⁵
5. MTG is a vertically integrated undertaking that owns a number of TV channels such as TV3, TV1000, ZTV, TV6, Viasat Sport and 3+. MTG is active on both content and distribution markets.
6. Canal Digital, is a Norwegian company providing pay-TV services *via* its DTH satellite platform in Norway. Canal Digital is owned by Telenor Broadcast Holding AS,⁶ a division of Telenor ASA, the former incumbent telecommunications operator

³ Case No. 15418 (former COM050.400.010).

⁴ From Dagens Næringsliv in co-operation with Bizkit (www.dn.no/bedriftsbasen/) [416412].

⁵ SMA-TV is an acronym for “satellite master antenna television system”. It is also sometimes referred to as “private cable”. SMA-TV systems are satellite systems used to distribute television signals to households located in one or more adjacent buildings, primarily serving urban and suburban multiple dwelling units that are linked by cable. SMA-TV is categorised as a type of digital broadcasting service assimilated to DTH and/or cable.

⁶ The undertaking referred to in this letter as Canal Digital is the company Canal Digital Norge AS. Canal Digital Norge AS is owned by Canal Digital AS (30%) and Telenor Broadcast Holding (70%). Telenor Broadcast Holding owns 100% of the shares in Canal Digital AS. Telenor Broadcast Holding is 100% owned by Telenor ASA.

in Norway. Canal Digital had revenues of NOK 1 286 million in 2005.⁷ Telenor Broadcast Holding also owns and operates large cable networks in Norway through its subsidiary Canal Digital Kabel-TV.⁸

7. The parent company of Canal Digital, Telenor Broadcast Holding AS, provides TV-based and broadband services to consumers in the Nordic region through DTH satellite transmission, satellite master antenna networks (SMA-TV) and cable networks. Telenor Broadcast Holding AS's operations also encompass the activities of the Norwegian analogue terrestrial broadcasting network through its wholly owned subsidiary Norkring AS.
8. Telenor, through its subsidiary Telenor Vision Intermedia AB, also acts as wholesaler and retailer commission agent of Canal Digital's pay-TV⁹ and pay-per-view (PPV)¹⁰ channels as well as third parties' TV channels to cable households connected to certain smaller cable networks and SMA-TV.
9. TV2 is a Norwegian public service broadcaster. TV2 is owned by TV2 Gruppen AS, which is owned by Egmont Holding (49,7 %), A-Pressen ASA/A-Pressen Nasjonale Medier AS (49,7 %) and 0,6 % by other shareholders.¹¹ Telenor has an indirect stake in TV2 insofar as it holds a 44,14 % stake in A-Pressen.¹²
10. Since 1991, TV2 has held the only licence to operate a nationwide advertising funded television channel in Norway. The current TV2 licence was granted for 7 years, from 1 January 2003 until 31 December 2009. TV2 had revenues of NOK 1 735 million in 2005,¹³ and is Norway's second largest television channel by viewing time.

3 THE PROCEDURE TO DATE

11. Copies of the complaint were transmitted to the competition authorities of the EFTA States and to the European Commission on 2 August 2001 in accordance with the provisions of Article 10 of Chapter II of Protocol 4 to the Surveillance and Court Agreement¹⁴ and Article 2 of Protocol 23 to the EEA Agreement respectively.
12. Following a fact-finding exercise and discussions with the parties during the course of 2001 and 2002, the Authority expressed concerns in March 2003 relating to the long duration of the exclusivity and potential foreclosure effects in the market.

⁷ From Dagens Næringsliv in co-operation with Bizkit (www.dn.no/bedriftsbasen/) [409694].

⁸ Canal Digital Kabel TV (formerly Telenor Avidi) offers cable TV, cable internet and cable telephony services to residential customers throughout Norway.

⁹ Pay-TV refers to the encrypted transmission, by whatever means, of television programmes or channels which can be accessed upon payment of a subscription.

¹⁰ Pay-per view services are similar to subscription-based pay-TV services in that you must pay to have the broadcasted content decrypted for viewing, but usually only entail a charge made per viewing, at a time scheduled by the operator.

¹¹ Schibsted, Egmont and A-Pressen used to own a third each, until end of October 2006 when Schibsted sold its shares to Egmont and A-Pressen.

¹² <http://www.apressen.no>

¹³ TV2 Annual Report 2005 (<http://pub.tv2.no/TV2/omtv2>).

¹⁴ As applicable before the entry into force of the Agreement amending Protocol 4 of 24 September 2004 (e.i.f. 20.5.2005).

13. In May 2003, TV2 and Canal Digital offered to lift the exclusivity provided for in the agreement concluded in 1998.
14. On the basis of these developments the Authority informed Viasat of the opportunity to negotiate with TV2 for a distribution agreement. On 7 July 2003, the Authority sent a letter to Viasat with its preliminary conclusions regarding the complaint.¹⁵
15. In this letter, the Authority stated that:

“The changes thus made to the Agreement create an opportunity for TV2 to negotiate the granting of DTH transmission rights for its channel from October 2003 under new terms with Canal Digital/CDN and/or Viasat. On this basis the Competition and State Aid Directorate’s preliminary consideration is that the Agreement as amended cannot be considered to contravene Article 53 of the EEA Agreement.”
16. As regards the possible application of Article 54 EEA the Authority found that there did not appear to be any indications that Canal Digital could behave independently of its consumers and competitors in Norway. As regards the wholesale supply of Norwegian general interest channels for DTH pay-TV, the Competition and State Aid Directorate’s preliminary position was that TV2 enjoyed neither a single dominant position in the market for the wholesale supply of Norwegian general interest channels nor a joint dominant position together with NRK within the meaning of Article 54 EEA. Finally, while TV2 might be viewed as dominant in the separate market for television advertising directed at Norwegian television viewers, it was not apparent to the Authority that by entering into the 1998 Agreement TV2 had abused its dominant position in the market for television advertising.
17. The Authority therefore took the provisional view that, following the amendments of the exclusive distribution agreement, the complaint no longer displayed a sufficiently strong interest under the EEA Agreement to be further investigated.
18. Following the conclusion of a new exclusive distribution agreement between TV2 and Canal Digital in autumn 2003 Viasat disagreed with the preliminary position of the Authority regarding Articles 53 and 54 EEA, and raised a new argument regarding Article 54 EEA. In addition, [**business secrets**]¹⁶
19. In April 2004, the Authority requested a copy of the new exclusive agreement that had been concluded between Canal Digital and TV2. The Authority informed Canal Digital and TV2 that it wished to assess the compatibility of the new exclusive distribution agreement between TV2 and Canal Digital with EEA law.
20. Given the time that had passed since the initial data collection in the case (during 2001 and 2002), the Authority decided to collect up-to-date market information regarding the Norwegian broadcasting market. On 4 February 2005 the Authority sent requests for information to Viasat, Canal Digital and TV2. Requests for information

¹⁵ Letter to Viasat dated 7 July 2003 [95266].

¹⁶ Letter from Viasat dated 14 January 2004 [185531].

were also sent to the Norwegian Media Authority on 23 March 2005, to UPC (now called GET) on 18 May 2005 and to Canal Digital Kabel-TV on 20 May 2005.

21. On 8 June 2005, TV2 issued an invitation to tender to Canal Digital and Viasat, in which both parties were invited to submit tenders for the distribution of TV2, TV2 Xtra, TV2 Sport and TV2 Film for a period of two years. The outcome of this tender procedure was that TV2 concluded another 2-year exclusive distribution agreement with Canal Digital which expires in October 2007.
22. While the tender procedure was still open, through a press statement issued by Telenor on 17 June 2005, the Authority was made aware of the fact that TV2 and Telenor had jointly acquired the rights to broadcast all Norwegian football competitions for four years. The press statements referred to a joint sports channel to be established and run jointly by Canal Digital and TV2.
23. To be able to assess the new developments in the market concerning right to distribute TV2, the Norwegian football rights and the new sports channel to be established by Telenor and TV2, the Authority decided to send another round of requests for information in the beginning of July 2005 to TV2, Canal Digital, the complainant and the Norwegian Football Federation (see section 5 below).
24. In December 2005 the Authority requested information from Canal Digital regarding the reasons behind price increases that it had announced (see section 14 below).
25. During the final months of 2005 and the spring of 2006 requests for information were sent to Canal Digital and Norkring, in order to clarify some issues regarding the complex nature of TV2's shadow zone (see section 12 below).

4 THE AGREEMENTS BETWEEN TV2 AND CANAL DIGITAL REGARDING THE DISTRIBUTION OF TV2

4.1 The 1998 Agreement

26. The first agreement between Canal Digital and TV2 came into effect in 1998 when Canal Digital acquired TV2's subsidiary Norgeskanalen (hereinafter "the 1998 Agreement"). As part of the transaction between Canal Digital and TV2, Canal Digital was given exclusive rights to distribute TV2 on the DTH satellite platform for almost 9 years.
27. Norgeskanalen AS was a DTH satellite distribution platform whose sole activity consisted of distributing TV2, NRK1 and NRK2 on the DTH satellite platform. Prior to Canal Digital's acquisition of Norgeskanalen, both Canal Digital and Viasat customers had to subscribe to Norgeskanalen if they wished to receive TV2, NRK1 and NRK2 via satellite.
28. Paragraph 6.1 of the 1998 Agreement set out the main exclusive distribution rights:

“TV2 appoints [Canal Digital] as exclusive distributor of the Channel to DTH and exclusive card distributor to CATV¹⁷ and SMATV of TV2’s TV channels in analogue and digital format for reception in Norway (...). The start date for such agreement shall be 1 May 1998.”

29. TV2 received 16% of the shares in Canal Digital as payment for Norgeskanalen. This share was later sold to Telenor.
30. Following the acquisition of Norgeskanalen by Canal Digital, NRK chose to enter into distribution agreements with both Viasat and Canal Digital.

4.2 The revised agreements

31. When the Authority, acting upon the present complaint, expressed concerns about the long duration of the exclusivity, TV2 and Canal Digital offered to review and shorten the exclusivity arrangements. In a side letter to the 1998 Agreement dated 16 June 2003 the parties undertook to discontinue the exclusivity with effect from 1 October 2003. The relationship between the parties would continue thereafter on a non-exclusive basis under the remainder of the terms of the 1998 Agreement. It was also stipulated that the discontinuation of the exclusivity from 1 October 2003 did not prevent TV2 from entering into discussions or negotiations with any third party prior to this date.
32. However, the parties stated that they would negotiate with a view to entering into a new exclusive distribution agreement, provided that the terms of such an agreement were compatible with EEA competition law. The parties undertook not to conclude a new exclusive distribution agreement before first consulting with the Authority on its terms and conditions.
33. Between June and early October 2003, TV2 negotiated with both Viasat and Canal Digital.
34. TV2 informed both parties that parallel negotiations were being conducted and that the issues to be negotiated with respect to both parties were the same (i.e. limited to DTH distribution, not involving other items such as joint purchasing of broadcasting rights or other possible cooperation projects).
35. TV2’s assessment was - in light of the side letter of 16 June 2003 - that there were two options for the outcome of the negotiations:
 - a) a non-exclusive agreement with both Viasat and Canal Digital,
 - b) a revised exclusive agreement with Canal Digital for a limited period.
36. At the start of the negotiations Viasat made it clear that its aim was to reach a non-exclusive distribution agreement with TV2. On the other hand, Canal Digital made it clear that its aim was to maintain exclusivity for a period not exceeding two years. Against this background TV2 negotiated along two different paths with the parties.

¹⁷ CATV, originally "community antenna television," now often "community access television": is a cable television system that receives television broadcasts by antenna and transmits them by cable to paying subscribers in areas where direct reception is either poor or not possible.

37. When the 1 October 2003 deadline passed, TV2 needed to take a decision quickly and gave both parties a last opportunity to revise their offers. TV2 therefore approached both Viasat and CD in separate e-mails sent on 7 October at 15:10. In these e-mails, special attention was paid to the particular items relating to each of the parties which might be of a decisive nature for TV2. The time limit for a final answer and offer was 8 October at 14:00 for both parties.
38. During the afternoon/evening there were telephone conversations between TV2 and both Viasat and CD. Viasat responded by e-mail on 8 October at 14:08. [
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-]. CD did not respond in writing, but stated that their offer made on 3 October was still valid but that they were not willing to open negotiations on any substantive issue.
39. TV2 decided to conclude a new exclusive agreement with Canal Digital the same day. According to TV2 its decision was taken on the basis of a total, commercial consideration of the two options at hand. TV2 found that objective business profitability grounds were adequate to justify the decision taken.¹⁸
40. This agreement (hereinafter the “2003 Agreement”) between Canal Digital and TV2 was laid down in an annex to the 1998 Agreement. The duration of the 2003 Agreement was two years, from 8 October 2003 until 8 October 2005. The 2003 Agreement granted Canal Digital an exclusive right to distribute TV2.
41. In June 2005, before the 2003 Agreement expired, TV2 issued invitations to tender for a new 2 year agreement to both Canal Digital and Viasat, in which both parties were invited to submit tenders for the distribution of four TV channels: TV2, TV2 Xtra, TV2 Sport and TV2 Film.¹⁹ The parties were invited to make two separate offers, one for exclusive distribution and the other for non-exclusive distribution. TV2 received tenders from both Canal Digital and Viasat on 30 June 2005.
42. The offer received from Viasat only related to non-exclusive distribution, whereas the offer made by Canal Digital only related to exclusive distribution. For this reason, TV2 requested Viasat by letter of 20 July 2005 to make an offer for exclusive distribution. A letter was also sent by TV2 to Canal Digital on the same date requesting it to make an offer for non-exclusive distribution. TV2 received a non-exclusive offer from Canal Digital on 3 August 2005. Viasat, however, replied in a letter dated 12 August 2005 that it would not submit an exclusive offer as it considered that the exclusive distribution of TV2 would contravene competition law.
43. By letters dated 2 September 2005, TV2 invited Viasat and Canal Digital to meetings on 6 and 7 September 2005 respectively. The purpose of the meetings was to clarify issues in relation to the offers. Moreover, TV2 informed the parties that the channels TV2 Sport and TV2 Film would not be part of the forthcoming DTH distribution agreement.²⁰
44. The offers from Canal Digital and Viasat were presented to TV2’s board of directors on 20 September 2005, and a decision was made to enter into an agreement

¹⁸ See letter from TV2 dated 17 October 2003 [93040].

¹⁹ For more details see the invitation to tender submitted by TV2 on 23 June 2005 [323875, 323876, 323877].

²⁰ The reason was that the plans for these channels were not finalised.

with Canal Digital, based on Canal Digital's offer for exclusive distribution. A letter informing Viasat about the decision was sent on 23 September 2005.

45. On 29 September 2005, TV2 entered into a third agreement with Canal Digital (hereinafter the "2005 Agreement") giving the latter exclusive rights to distribute the television channels TV2 and TV2 Zebra (formerly TV2 Xtra) on Canal Digital's DTH satellite platform and SMA-TV platform. The duration of the exclusive distribution agreement was two years, from 9 October 2005 to 8 October 2007.

5 THE ACQUISITION OF NORWEGIAN FOOTBALL RIGHTS BY TV2 AND CANAL DIGITAL/TELENOR

46. In June 2005, TV2 and Canal Digital AS jointly acquired the rights to broadcast Norwegian football competitions.

47. According to a press release issued on Telenor's homepage:

*"The agreement between the Norwegian Football Federation and TV2 and Telenor comprises all rights to all Norwegian football shown on TV as well as on the Internet, broadband and mobile phones. Telenor and TV2 will consider resale of rights to other parties and use on other platforms. TV2 and Telenor aim to establish a new sports channel together. The new channel comes as an addition to TV2's main channel and TV2 Extra and will be a pay TV channel."*²¹

48. The rights to "Tippeligaen", the Norwegian "premier league" and the second division league were acquired for three years. The remaining rights were acquired for four years.

49. The Authority has gathered information about the tender of the football rights to assess the impact the acquisition of those rights might have had on the tender for the rights to distribute TV2 (see paragraph 23 above).²²

50. [**business secrets**].²³ [

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]. In its invitation to tender the Norwegian Football Federation had grouped the football rights into different packages and invited interested parties to bid separately for each package. The deadline for the submission of bids in the tender invitation was 30 June 2005.

51. However, on 15 June the Norwegian Football Federation sent an e-mail to the interested parties, in which it stated that it had received an offer for the football rights with a deadline on 17 June at 14.00 and that it would make a decision on that offer within the said deadline.²⁴

²¹ See Telenor's press release dated 17 June 2005 (http://press.telenor.com/PR/200506/999086_5.html).

²² The Norwegian Competition Authority conducted an investigation into the acquisition of the football rights by TV2 and Canal Digital AS but decided not to intervene.

²³ See also News article – SBS' bid for Norwegian football [426593].

²⁴ Reply from TV2 dated 15 August 2005, answer to question 6 [330593]

52. It also appears that it was made public on NRK's 11 o'clock news on the evening of 16 June 2005 that MTG and NRK had made a joint bid and that Canal Digital/TV2 made a competing joint bid on very short notice. Finally, although Telenor announced in its press release that TV2 and Telenor (Canal Digital) together aimed to establish a new sports channel it was only in spring 2006 that it was decided to establish TV2 Zebra as a joint venture between TV2 and Telenor and to transfer the jointly acquired football rights to this channel.²⁵
53. While the tender for the rights to distribute TV2 and the tender for the rights to broadcast the Norwegian football competitions were taking place in parallel the Authority's investigation has established that the two tenders were run independently of each other.

6 TV CHANNELS IN NORWAY

54. Broadcasting services supplied to viewers may include what is known as "free-to-air" television broadcasting, pay-TV broadcasting, pay-per-view (PPV) broadcasting and the delivery or transmission of interactive television services.²⁶
55. According to the European Commission, TV channels comprise a full programme, which can be of a general nature (general interest channels), or concentrate on a specific genre (thematic channel).²⁷ Usually, general interest channels aim to offer a range of programmes such as news, sports, movies, entertainment and children's programmes, while thematic channels focus on one or a limited selection of programme categories.
56. Around 98% of all households in Norway have access to one or more television channels.²⁸

6.1 Norwegian public broadcasters

57. The largest TV channel in Norway, measured in viewing time, is the national general interest television channel NRK1, which is run by the Norwegian Broadcasting Corporation (NRK). NRK has a statutory right to broadcast, unlike the other broadcasters in Norway which rely on licences issued by the Ministry of Culture and Church Affairs. NRK is a state owned company which is mainly funded by a yearly licence fee charged by the Norwegian State to all TV set owners. The licence fee paid by TV set owners for the year 2006 was NOK 1 888 (2 039 incl. VAT). The licence fee amount is determined every year by the Norwegian Parliament. NRK also runs a smaller channel NRK2.
58. The second largest TV channel in Norway, measured in viewing time, is TV2 which is advertising funded and privately owned. TV2 is a public broadcaster, whose content mainly consists of news, current affairs programmes, documentaries, sport,

²⁵ Letter from Telenor's counsel dated 22 March 2006 [367892]; see also Telenor Annual Report 2006, page 67-68 and TV2 Annual Report 2006, pages 10 and 26.

²⁶ Interactivity is a functionality rather than a specific type of service, and it can be applied in a wide variety of contexts. Its distinguishing characteristic is the ability of viewers to interact with TV programmes. (Definition by Ofcom, <http://www.ofcom.org.uk>).

²⁷ Case No COMP/M.3595 - SONY / MGM (OJ C139, 8.6.2005, p. 37), paragraph 18.

²⁸ European Audiovisual Observatory 2005 Yearbook, volume 2, table T.7; and (<http://www.medienorge.uib.no/>).

entertainment (series and films). The channel also has a wide selection of Norwegian-produced entertainment.

59. NRK1, NRK2 and TV2 are national general interest channels (public service channels): free-TV channels that are subject to public service broadcasting requirements, i.e. their broadcasts must have a nationwide coverage, contain a varied menu of programming, offering something for everyone, and generally help to strengthen the Norwegian language, identity and culture.²⁹
60. It is specified in the licence conditions of TV2, applicable from 1 January 2003 until 31 December 2009, that the TV2 channel shall be available as free-TV on the analogue terrestrial platform and have the same coverage on this platform as in the previous licence period.³⁰

6.2 Other Norwegian TV channels

61. Other Norwegian channels include TVNorge, TV3, TV2 Zebra, TV2 Sport, Sport N and some small local channels.
62. TVNorge (hereinafter “TVN”) was founded in December 1988 and was the first commercial television channel in Norway. TVN is a general entertainment channel, which also offers national and local news. The target group of TVN is viewers between 12 and 44 years of age. Originally, TVN broadcast *via* satellite and was not available on the analogue terrestrial network. Later it joined forces with several local TV broadcasters who broadcast TVN’s programmes on the analogue terrestrial network when there is no local programming. The channel is thus available free-to-air *via* local TV stations in some areas. Scandinavian Broadcasting Systems (SBS) owns 100% of the shares in TVN.³¹
63. TV3 was established the same year as TVN and is owned by MTG. TV3 is an entertainment advertising funded TV channel. TV3’s main target group is viewers between 15 and 49 years of age. The channel content consists of various TV series, films, sports etc. TV3 has two “sister channels”, one in Sweden and one in Denmark. TV3 is offered by Viasat on its DTH satellite platform and it is also offered to distributors using distribution platforms other than DTH (i.e. cable, SMATV, broadband IPTV³²).³³ TV3 is up-linked from the UK. It has never been available on Canal Digital’s DTH satellite platform in Norway or on the analogue terrestrial network.
64. TV2 Zebra offers a combination of sport and general entertainment. It was launched in autumn 2005 by TV2 and since spring 2006 has been a joint venture between TV2 and Telenor. The channel commercialised part of the football broadcasting rights to Norwegian football in 2006. The channel is available on most cable networks, broadband TV and on the DTH satellite platform of Canal Digital.

²⁹ Section 3-3 to 3-5 of NRK’s Statutes and section 3-2 to 3-6 of TV2’s broadcasting licence (available at: <http://www.regjeringen.no/nb/dep/kkd/Tema/andre/Kringkasting/Konsesjoner.html?id=86811>).

³⁰ Section 1-4 of TV2’s broadcasting licence.

³¹ SBS is owned by two private international investment companies; Kohlberg Kravis Roberts & CO L.P. and Permira Holdings Limited.

³² Internet protocol television - refers to the delivery of digital television and other audio and video services over broadband data networks using the same basic protocols that support the internet.

³³ Letter from Viasat dated 29 June 2006, page 4 [380036].

Telenor Broadcast Holding AS holds 45% and TV2 the remaining 55% of the shares in TV2 Zebra. The channel has a viewer share below 5%.

65. In 2005, MTG launched SportN together with NRK. SportN offers a wide selection of winter and summer sports like the UEFA Champions League, the UK FA Cup (football), the PGA-tour (golf), Formula 1, skiing, ski-jumping, ice-skating and biathlon.³⁴
66. TV2 Sport was launched in 2007 as a subsidiary of TV2 Zebra and is used to commercialise the football rights acquired jointly by Canal Digital and TV2.³⁵

6.3 Premium Pay-TV channels available in Norway

67. TV channels offered in the pay-TV context are mostly thematic channels, focusing on one or a limited number of programme categories. Some of these channels may be categorised as “premium content” channels. In particular transmission of recent movies (“first run” television movies) and live coverage of top sports events (in particular football matches) are considered to be premium content. This is content which the viewers often have a high willingness to pay for. In Norway there are two suppliers of premium pay-TV channels, Canal+ and TV1000.
68. Canal+ is a brand name which is used in the Nordic countries by C More Entertainment. There are currently 7 Canal+ channels.
69. CANAL+ Television AB, which broadcasts in Denmark, Finland, Norway and Sweden, was founded in 1997 by the French company CANAL+. Baker Capital and Nordic Capital acquired CANAL+ Television AB in 2003. It was renamed C More Entertainment and became part of C More Group AB. In February 2005 SBS Broadcasting became the owner of C More Entertainment which continued to use the brand name Canal+. Its premium concept is based on exclusive rights to sport, film and TV-series. The Canal+ TV channels are offered to subscribers via distributors at a monthly fee. In addition Canal+ offers pay-per-view services to its subscribers.³⁶
70. TV1000 is a Scandinavian pay-TV operator broadcasting in Denmark, Finland, Norway and Sweden. TV1000, which belongs to MTG, was established in 1989. It focuses on Hollywood films and Nordic films. On TV1000 more than 300 films are shown every year. TV1000 can be subscribed to via Viasat’s DTH platform or via cable networks for a monthly fee.³⁷ There are currently six TV1000 channels.

6.4 International channels available in Norway

71. There are a large number of international channels which are available to Norwegian TV viewers on the satellite and cable platforms. These are mainly advertising financed thematic or special interest channels or foreign public broadcasting channels. Some of these channels are also financed by subscription fees (see Annex 4 for more detailed information).

6.5 EBU Membership

³⁴ See <http://www.sportn.tv/>

³⁵ See footnote 25 above.

³⁶ See <http://www.canalplus.no/page.asp?guid=9CC5F9EE-C900-4B62-B1CD-02B9F4E64FD0>

³⁷ See http://www.tv1000.no/index.phtml?page_type=document&document=3117&nav=48

72. NRK and TV2 are the only public broadcasters in Norway, and the only Norwegian members of the European Broadcasting Union (hereinafter “EBU”).³⁸
73. According to Article 3§3 of the EBU Statutes,³⁹ membership in EBU is limited to “National broadcasters” who meet certain criteria. The requirements for membership in the EBU refer to the national coverage of the channels, national character and importance of the content, varied and balanced programming, where a substantial proportion thereof has to be produced and/or commissioned at their own cost and under their own editorial control.⁴⁰
74. NRK1 and TV2 are the only channels in Norway that meet the EBU criteria of covering “virtually all” television households (by whatever distribution method). “Virtually all” means 98% of the relevant households.⁴¹
75. In order to meet the criterion regarding national character and importance, the channels’ programmes must be “*produced for the national audience, reflecting the interests and concerns of society at large as well as, more specifically, the variety of national culture*”.⁴² The requirement regarding varied and balanced programming means that the service must not be thematic (such as a sports channel, a news channel or a channel for children) or concentrate on only two or three programme categories”.⁴³
76. Programming of national broadcasters must include at least the following various categories: news and current affairs (covering both national and international news), sport, drama, entertainment, music and arts/culture, programmes for children and other young persons; these various programme categories must appear regularly in the programme schedule.⁴⁴

7 TV PLATFORMS

77. Several technical platforms are used for delivering TV signals to viewers in Norway, and many viewers have a choice between different platforms. These include the analogue terrestrial network, cable networks and the DTH satellite platforms of Canal Digital and Viasat. Emerging technological platforms include broadband IPTV and mobile TV, as well as the planned roll-out of a digital terrestrial TV (DTT) network.

7.1 Analogue terrestrial broadcasting networks

78. Norkring has nation-wide transmission networks for analogue TV and radio broadcasting. It has 6 500 transmitter units spread all over Norway.⁴⁵

³⁸<http://www.ebu.ch/>

³⁹ The detailed text of the regulation can be accessed at http://www.ebu.ch/departments/legal/activities/leg_membership.php

⁴⁰ Substantial proportion" means at least 30% of the totality of the programmes broadcast.

⁴¹ Article 3§4 point 3 of the EBU Statutes, regarding technical coverage.

⁴² Article 3§4 point 2 of the EBU Statutes.

⁴³ Article 3§4 point 4 of the EBU Statutes, regarding programme obligations. The fact that a broadcaster provides thematic programming in addition, as a supplementary service, is without relevance.

⁴⁴ Article 3§4 point 4 of the EBU Statutes.

⁴⁵ <http://www.norkring.no/templates/Page.aspx?id=299>

79. The analogue terrestrial TV distribution faces capacity constraints which limit the number of channels that can be broadcasted simultaneously, and broadcasting on this platform is therefore subject to licence requirements.⁴⁶ NRK1, NRK2, TV2 and around 23 local television channels are broadcast on the terrestrial analogue network.⁴⁷ Of the 23 local channels, 16 have shared transmission with TVN.⁴⁸
80. The channels broadcast on the analogue network are all free-to-air channels; the only cost to viewers is the price of the antenna needed to receive the TV signals and the compulsory licence fee paid to NRK.

7.2 Cable networks

81. There is no single cable network covering the whole of Norway but rather a large number of separate networks with limited overlap.⁴⁹ In 2004, 61,5% of all Norwegian homes were passed by cable and 73,3% of all homes passed by cable were connected to a cable network, in other words 45% of all Norwegian homes.⁵⁰
82. Because of the low population density in rural areas and the topography of Norway it appears unlikely for technical and economical reasons that the current coverage of cable networks could be significantly extended. It does not appear to be economically feasible to provide national coverage for cable distribution.
83. Cable networks have in recent years been gradually upgraded to provide digital services, such as high speed internet access, to already existing customers.
84. Under section 4-2 of the Norwegian Broadcasting Regulation, cable owners have a duty to retransmit upon request the television broadcasts of NRK1, NRK2, TV2 and terrestrial local public television services (a so-called “must carry” obligation). Cable operators must pay copyrights fees to broadcasters under the applicable copyright legislation. These fees have been laid down in agreements with the collecting society Norwaco.⁵¹

7.3 DTH satellite platforms

85. There are two DTH satellite platforms in Norway one operated by Viasat and one by Canal Digital.
86. DTH satellite transmission can, given the Nordic footprints of the satellites used for transmission, reach 97% of the Norwegian population.⁵² Some satellite users, who wish to receive both Viasat and Canal Digital, have a dual-headed satellite dish, because two satellites with different positions are used for transmissions to the Nordic DTH market.⁵³

⁴⁶ Norwegian Broadcasting Act, Chapter 2.

⁴⁷ <http://www.medi norge.uib.no/>

⁴⁸ <http://www.tvnorge.no/tvnorgeinfo>

⁴⁹ The European Audiovisual Observatory 2002 Yearbook, lists 249 cable networks in Norway, if one excludes the 750 SMA-TV networks - volume 2, table 7.7.

⁵⁰ The European Audiovisual Observatory 2005 Yearbook – volume 2, table T.7.1.

⁵¹ <http://www.norwaco.no/kabel/fellesavtale.html>

⁵² Reply from Norkring, dated 7 December 2005, point 4 [353596 (426673 non-confidential)]. Norkring has claimed that the exact percentage is confidential.

⁵³ Canal Digital and NRK use satellite transmission services provided by Telenor at 1° West, Viasat uses services provided by NSAB at 5° East.

87. Norwegian legislation does not impose a duty to retransmit the television broadcasts of NRK1, NRK2, TV2 and terrestrial local public television services on DTH satellite platforms. The conditions for such transmission are therefore laid down in agreements between the parties on commercial terms.
88. Both platforms have been fully digitalised. Viasat started digital distribution spring 2000. At the same time it continued to offer an analogue service in parallel to the digital service. From May 2004 Viasat no longer offered any analogue distribution service. Canal Digital started its digitalisation process some years earlier. NRK and TV2 shut down their analogue DTH satellite distribution in October 2002. It appears that at this point in time Canal Digital ceased its analogue distribution service and that all its subscribers at the end of 2002 were digital subscribers.

7.4 Digital terrestrial television (DTT)

89. Digital terrestrial television (“DTT”) is about to be introduced in Norway. On 1 June 2006, Norsk Televisjon AS (“NTV”) was awarded a licence to develop and run the DTT network. NTV is jointly owned by NRK, TV2 and Telenor Broadcast Holding AS who each hold 1/3 of the shares.
90. Roll-out of the DTT network will start in September 2007. Mid-November 2007, DTT will be available in 13 counties. Households in the remaining 6 counties will have access to DTT by mid-November 2008. Analogue shut-down is due to take place between March 2008 and early autumn 2009. By autumn 2009 analogue shut-down will have been completed for the whole country.⁵⁴
91. To receive TV signals over the DTT platform a DTT decoder is needed. The cost of a DTT decoder is estimated at NOK 1 500 (the maximum price set by Norwegian authorities).
92. According to the DTT licence the DTT platform should cover 95% of all Norwegian households when roll-out has been completed.

7.5 Broadband IPTV and Mobile TV

93. In Norway, a number of new companies have started distributing broadband IPTV, mostly in urban areas. The players are mainly locally based and include municipal undertakings and electricity companies. In some cases, broadband IPTV is offered as part of a triple play solution containing access to the Internet, IP telephony and TV.
94. However, according to Canal Digital, broadband IPTV was still not a significant competitive factor in 2005. Since many companies were upgrading their networks in order to supply broadband IPTV, Canal Digital was of the opinion that broadband IPTV could be a more significant competitive constraint in the TV distribution market in the near future.
95. Viasat has alleged that since broadband IPTV is only available to a limited number of households in Norway the effect on the market is unnoticeable.⁵⁵ There is nothing which indicates that this situation has changed significantly since 2005.⁵⁶

⁵⁴ <http://www.ntv.no/nar>

⁵⁵ Reply from Viasat, dated 14 March 2005, page 4 [313632].

⁵⁶ <http://www.digi.no/php/art.php?id=375506>

96. Mobile TV has generally not yet been available in Norway.⁵⁷

8 PAY-TV SERVICES IN NORWAY

97. The two main methods for delivering pay-TV to Norwegian households are via cable networks and DTH satellite platforms. Common to both methods of delivery is that pay-TV operators encrypt their content before broadcasting it, so that the customers must buy or rent a decoder terminal (also known as a “set-top box”) to be able to view the pay-TV programmes.⁵⁸ In addition, satellite viewers must buy a satellite dish and cable viewers must be connected to a cable network to be able to receive the TV signals in the first place.
98. Households that purchase television services from cable or DTH companies do so against payment of subscription fees. Generally, pay-TV operators bundle TV channels and offer them as packages to subscribers.
99. Channels that are available free-to-air on the terrestrial platform are often included in the packages offered by pay-TV suppliers.

8.1 Pay-TV via cable

100. In 2004 there were 879 000 customers subscribing to cable TV in Norway.⁵⁹ GET (formerly UPC) and Canal Digital Kabel-TV are the main market players delivering pay-TV via cable in Norway. Canal Digital Kabel-TV and UPC together served between 80% and 90% of all cable subscribers in the first half of 2005.⁶⁰ In addition, several small local operators exist throughout the country, but these have fewer than 10 000 subscribers each.⁶¹ Cable transmission may be either digital or analogue. With the introduction of digital TV the number of channels which can be distributed through the cable network and the flexibility with which these can be bundled into packages has increased.
101. During the relevant period, both UPC and Canal Digital Kabel-TV have offered a basic package to consumers containing the Norwegian free-to-air channels NRK1, NRK2, TV2, TVN and some local channels. In addition the basic packages include TV3 and Swedish public broadcasting channels as well as a number of special interest channels. An extended bundle of channels has been offered on top of the channels in the basic package. This so-called Family package has included a number of special interest channels. Moreover, the premium pay-TV channels of TV1000 and Canal+ have been offered in two separate packages (see Annex 4 for more details).
102. Rights to view cable transmissions in multiple dwelling units (MDUs) or housing developments are often acquired by housing associations in Norway. This is the case for a large proportion of the households connected to cable TV.⁶² This method of installation provides a service to the entire property or MDU. The cost of the basic

⁵⁷ <http://www.digi.no/php/art.php?id=378502>

⁵⁸ A decoder terminal has not been required to view the basic analogue cable TV packages from either GET or Canal Digital Kabel, but for the more extensive packages, such a terminal has been required. For the reception of digital TV a decoder terminal is required also for the basic package.

⁵⁹ European Audiovisual Observatory 2005 Yearbook, volume 2, table T.7.1.

⁶⁰ Reply from UPC, dated 9 June 2005, pages 1-2 (the exact figures are regarded as confidential) [322288].

⁶¹ Reply from UPC, dated 9 June 2005, page 2 [322288].

⁶² Reply from UPC, dated 9 June 2005 (the exact figures are regarded as confidential) [322288].

cable TV services is often part of the monthly rent individual households pay to the housing association. In addition, housing associations benefit from significantly discounted prices when compared to the standard tariffs listed by the cable operators.⁶³

8.2 Pay-TV via DTH satellite platforms

103. In Norway Canal Digital and Viasat are the only pay-TV operators on DTH satellite platforms. DTH viewers get access to encrypted pay-TV through a smart card issued by the platform operator. This card is inserted into the card slot of the decoder (or set-top box). Due to different technical standards and competing hardware, decoders used in a cable context cannot be used for DTH reception and *vice versa*.
104. Satellite decoders may be interoperable, allowing more than one operator's card to be used, or proprietary, accepting only the proprietor's smart card. An interoperable or non-proprietary decoder accepts two or more smart cards. Such decoders are supplied with a common interface slot into which a conditional access module (CA-module) can be inserted. The CA-module accepts the additional smart card from the other pay-TV operator.
105. Proprietary decoders only work with one operator and subscribers have to buy one decoder for each DTH platform they want to receive TV channels from. The issue of interoperability on the DTH platform is discussed in more detail in section 10 below.
106. Satellite dishes are banned by most MDUs or require explicit consent from the management committee.⁶⁴ This limit the possibility for individual households to subscribe to DTH satellite TV services.
107. Details on the number of subscribers and the turnover on the DTH satellite platforms are given in section 9 below.

8.3 Pay-TV as a SMA-TV option

108. For housing associations wishing to receive satellite TV services, a common satellite dish can be installed and a cable connection brought from the dish to the individual households. It appears, however, that this SMA-TV option is used relatively infrequently by MDUs in Norway.

8.4 Pay-TV on the DTT platform

109. The pay-TV operator on the DTT platform is called RiksTV AS ("RiksTV"). Like NTV, RiksTV is jointly owned by NRK, TV2 and Telenor Broadcast Holding AS who each hold 1/3 of the shares.
110. NRK has a distribution agreement with NTV. The channels of NRK will be available free of charge on the DTT platform. No smart card will be needed to receive these channels.

⁶³ Reply from Canal Digital Kabel-TV, dated 2 June 2005, point 6 [321846]; Email from UPC, dated 30 January 2003, point 12 (the exact figures are regarded as confidential) [99209/179874].

⁶⁴ This is often stated in the statutes of the different housing associations.

111. For all other channels smart cards will be needed. RiksTV will distribute these cards. A smart card giving access to TV2 will be available free of charge until the end of 2009.⁶⁵ The remaining channels will be placed in packages and be available upon subscription. The TV channels which will be included in the pay-TV services of RiksTV on the DTT platform were made public on 12 June 2007.
112. As a result of analogue shut-down, households which receive TV signals from the analogue terrestrial network will have to migrate to a new TV platform. However, the DTT platform will represent a free-TV option giving access to both NRK's channels and TV2 against a one-off investment in a DTT decoder.

8.5 Wholesale activities

113. The content that pay-TV platforms offer to their subscribers is acquired in wholesale markets. The pay-TV platforms negotiate for the rights to transmit different channels. The rights to broadcast TV channels are typically licensed per platform, i.e. separately for cable and DTH satellite providers. Simultaneously broadcasters acquire transmission services from owners of distribution platforms.
114. Further upstream TV channels themselves negotiate for the rights to broadcast different types of content to the extent they use content which is supplied from external sources, e.g. films, sports events and various types of entertainment programmes.

9 SUBSCRIBERS AND TURNOVER ON THE DTH SATELLITE PLATFORMS

9.1 Overview of packages on the DTH satellite platforms

115. There are several different packages to choose from on DTH satellite platforms. These packages have to some extent been subject to changes since the complaint was lodged. As mentioned above, the introduction of digital TV has increased the number of channels which can be distributed and the flexibility with which channels can be combined into packages.
116. Appendix 19 to Viasat's letter dated 5 November 2002 contains an overview of the composition of Viasat's packages from 1997 to 2002.⁶⁶ From September 1997 its analogue packages consisted of the Viasat Card, Viasat Pluss, Viasat Silver and Viasat Gold. The Viasat Card gave subscribers access to NRK1, NRK2 and TV3. Viasat Pluss appears to have been the basic tier package while Viasat Silver gave access to five additional channels on top of the basic tier. Viasat Gold contained, in addition, the channels TV1000 and Cinema. No new sales were made of the analogue packages after 1 April 2000.
117. From 25 April 2000 a digital service was provided. This service consisted of the Viasat Card, Viasat Silver and Viasat Gold. On 1 January 2002 Viasat Basic replaced the digital Viasat Card and Viasat A la Carte replaced the Silver package. There were no new sales of the Viasat Card or the Viasat Silver package from this date.⁶⁷

⁶⁵ Norwegian authorities have expressed an interest in having a second national public broadcaster available as free-TV after 2009. TV2's current broadcasting licence expires at the end of 2009.

⁶⁶ Reply from Viasat dated 5 November 2002, page 6 and appendix 19 (cf. appendix 6) [101300].

⁶⁷ Reply from Viasat dated 5 November 2002, page 6 and appendix 19 (cf. appendix 6) [101300].

118. From Viasat's reply dated 14 March 2005 it appears that sales of the Silver package resumed at the beginning of 2003. There is no mention of the Viasat A la Carte service after this point. Moreover, it appears that the Viasat Basic package was replaced by the Viasat Start packages in 2003.⁶⁸
119. Since 2003 the Viasat Start package has been the basic tier of Viasat. This package has included NRK1 and NRK2 as well as TV3, other Viasat special interest channels and SportN. On the other hand, neither TVN nor any TV2 channels have been included in this package.
120. Viasat Silver is composed of the basic tier and a second tier with an extended bundle of mostly special interest channels. The Silver package has thus included the channels of the Viasat Start package, a number of additional special interest channels and several international channels.
121. The Gold package is composed of the channels in the basic tier and the second tier together with a premium tier. The premium tier has included the TV1000 channels and some other channels. Viasat has added a number of sports channels to its Gold package in recent years.
122. Canal Digital has had similar packages on its DTH satellite platform. However, there have been more combinations of packages available and differences with regard to the channels which have been on offer.
123. Canal Digital has a basic tier containing channels which have been distributed free-to-air on the terrestrial network (the Local package). This package was extended with the distribution of TV2 Xtra in 2004 (which was re-launched as TV2 Zebra in autumn 2005). From 2007, the TV2 news channel has also been included in the Local package. Canal Digital offers an extended bundle of channels on top of its basic tier. This Family package includes a variety of international channels as well as the TV2 film channel in addition to the channels in the Local package.
124. A bundle of premium pay-TV channels (Canal+ and C More Film) are offered either on top of the basic tier, as the Canal+ package, or on top of the two bundles included in the Family package, as the Entertain package. This Entertain package has thus contained all the channels in the Family package and the bundle of premium pay-TV channels in addition to three other channels.⁶⁹
125. An overview of the main packages offered by Viasat and Canal Digital respectively in October 2006 is given in Annex 4.

9.2 Market data submitted by Viasat

126. In 2000 Viasat estimated that the number of subscribers had developed as follows from 1995 to 2000:⁷⁰

Table 1:

No. of Subscribers	Viasat	Canal Digital	TV2/ Norgeskanalen
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⁶⁸ Reply from Viasat dated 14 March 2005, page 19 [313632].

⁶⁹ Canal Digital has recently changed the way in which consumers can combine the Local or Family packages with the Canal+ channels, see http://www.canaldigital.no/templates/generalarticle_5193.aspx.

⁷⁰ Viasat's letter to the Norwegian Competition Authority of 16 October 2000 (Annex 28 to the complaint).

31.12.95	[xxx]	[xxx]	[xxx]
31.12.96	[xxx]	[xxx]	...
31.12.97	[xxx]	[xxx]	[xxx]
31.12.98	[xxx]	[xxx]	...
31.12.99	[xxx]	[xxx]	...
30.09.00	[xxx]	[xxx]	...

127. Viasat considered in 2000 that approximately [xxx] of all DTH satellite customers subscribed to services from both platform operators.⁷¹

128. In 2002 Viasat estimated that [xxx] of all Viasat subscribers were subscribers to both Viasat and Canal Digital.⁷² Viasat submitted the following data relating to the number of subscribers from 1997 to 1 September 2002:⁷³

Table 2:

No. in 000'	1997	1998	1999	2000	2001	Sept. 2002
Total DTH households	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Viasat smart card holders (analogue)	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Viasat smart card holders (digital)	n.a	n.a.	n.a.	[xxx]	[xxx]	[xxx]
Viasat total	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]

129. In 2005 Viasat considered that at the end of 2004 there were [xxx] DTH households and that there were [xxx] households ([xxx]) which subscribed to the services of both Canal Digital and Viasat.⁷⁴

130. Viasat estimated that the average number of subscribers from 2002 to 2004 was as follows:⁷⁵

Table 3:

No. in 000'	2002	2003	2004
Total DTH cards	[xxx]	[xxx]	[xxx]
Viasat smart card holders (analogue)	[xxx]	[xxx]	[xxx]
Viasat smart card holders (digital)	[xxx]	[xxx]	[xxx]
Viasat total	[xxx]	[xxx]	[xxx]

⁷¹ Viasat's letter to the Norwegian Competition Authority of 16 October 2000 (Annex 28 to the complaint).

⁷² Reply from Viasat, dated 5 November 2002, page 26, 3rd note to table 26VI [101300].

⁷³ Reply from Viasat, dated 5 November 2002, page 24, table 26 III [101300].

⁷⁴ Reply from Viasat, dated 14 March 2005, page 6 [313632].

⁷⁵ Reply from Viasat, dated 14 March 2005, page 18 [313632].

131. According to Viasat the number of total card holders in 2002 and 2003 included a large number of analogue customers with more than one subscription, a number that decreased significantly in the digitalisation process.⁷⁶
132. Viasat has submitted that it began a digitalisation process (analogue conversion project) in March 2003 and that it switched off the analogue signal in April 2004. In March 2003 Viasat had approximately [xxx] analogue customers (closing volume). During the conversion period approximately [xxx] of these customers were migrated to the digital platform. In May 2004, after the signal was shut off, [xxx] customers churned from the analogue package. During the period March 2003 to August 2004 Viasat estimates that it lost [xxx] customers (net churn) in the analogue “package” only. [**business secrets**].⁷⁷
133. It appears from Viasat’s submission in 2002 that from January 2002 the only analogue service offered was the distribution of TV3.⁷⁸ This service appears to have been available until the end of April 2004. Thus the analogue service (“package”) offered from 2002 to the end of April 2004 does not appear comparable with the digital services offered. In January 2003 Viasat maintained that a proper comparison of Viasat’s and Canal Digital’s market shares should not include the analogue subscribers.⁷⁹
134. Disregarding analogue subscribers, the market shares of Viasat based on Viasat’s own 2005 estimates were as follows (average numbers for each year):

Table 4:

No. in 000’	2002	2003	2004
Total DTH cards	[xxx]	[xxx]	[xxx]
Viasat smart card holders (digital)	[xxx]	[xxx]	[xxx]
Viasat market shares (digital smart cards)	[xxx]	[xxx]	[xxx]

135. Viasat has provided data on the number of subscribers to its packages at the end of the year in 2002 to 2006 as follows:⁸⁰

Table 5:

Number of Viasat subscribers at the end of the year	2002	2003	2004	2005	2006
Gold package (Digital)	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]

⁷⁶ Reply from Viasat, dated 14 March 2005, page 18 [313632].

⁷⁷ Reply from Viasat, dated 14 March 2005, pages 18 and 26 [313632].

⁷⁸ Reply from Viasat, dated 5 November 2002, page 24, table 26 III [101300]. Only TV3 is mentioned as an analogue service in this table from January 2002.

⁷⁹ Letter from Viasat, dated 29 January 2003, page 3 [99262].

⁸⁰ Reply from Viasat, dated 14 March 2005, page 19 [313632]; Reply from Viasat, dated 29 June 2006, page 3 [380036]. The table does not include “other packages” as reported by Viasat in its reply on 14 March 2005. There were 9.666 such subscribers at the end of 2002, 15.720 at the end of 2003 and 15.978 at the end of 2004.

Start/ Silver (Digital)	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Total Digital	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Analogue	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Total	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]

136. As regards subscription to packages with premium content (the Gold package) table 5 above shows that the number of Viasat subscribers [**business secrets**]. In 2005 the number of Viasat premium subscribers [**business secrets**].

137. The number of Viasat subscribers who subscribe to the Start/Silver digital packages [**business secrets**].

138. According to submissions made by Viasat in spring 2007, [**business secrets**]. It considered that Canal Digital has 450 000 or more subscribers such that approximately [xxx] of Canal Digital subscribers are also Viasat subscribers.⁸¹

9.3 Market data gathered by the Authority

139. Canal Digital has like Viasat submitted its number of subscribers at the end of the year broken down on its different digital packages from 2002 to 2006. Turnover data has also been submitted. A number of calculations have been made on the basis of this data.

140. Amongst others the share of Viasat subscriptions of all subscriptions to digital packages has been calculated. While these calculations are confidential, they show that the share of Viasat subscriptions as a percentage of all subscriptions has been in the range of 25% to 40% from end 2002 to end 2006.

141. The tables below show the calculations which have been made by the Authority. Information which is confidential has been masked or removed.

⁸¹ Email from Viasat dated 27 April 2007 [419736]; email from Viasat dated 10 May 2007 [421462].

Table 6: Total DTH market - number of digital subscriptions at the end of the year

	2002	2003	2004	2005	2006
VIASAT	[XXX]	[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL	[...]	[...]	[...]	[...]	[...]
TOTAL	[...]	[...]	[...]	[...]	[...]
VIASAT'S SHARE	[25-40%]	[25-40%]	[25-40%]	[25-40%]	[25-40%]
CANAL DIGITAL'S SHARE	[60-75%]	[60-75%]	[60-75%]	[60-75%]	[60-75%]
TOTAL GROWTH PER YEAR		[...]	[...]	[...]	[...]
GROWTH IN %		[0-10%]	[0-10%]	[0-10%]	[0-10%]
VIASAT'S GROWTH		[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL'S GROWTH		[...]	[...]	[...]	[...]
VIASAT'S GROWTH IN %		[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL'S GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT'S SHARE OF TOTAL GROWTH		[...]	[...]	[...]	[...]
CANAL DIGITAL'S SHARE OF TOTAL GROWTH		[...]	[...]	[...]	[...]

*This table includes the subscribers to Canal Digital's Local, Family, Canal+ and Entertain packages and Viasat's Start, Silver and Gold packages

Table 7: Total DTH market - turnover all DTH packages (NOK 000)

TOTAL TURNOVER ALL DTH PACKAGES	2002	2003	2004	2005	2006
VIASAT	[XXX]	[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL	[...]	[...]	[...]	[...]	[...]
TOTAL	[...]	[...]	[...]	[...]	[...]
VIASAT'S SHARE	[25-40%]	[25-40%]	[25-40%]	[25-40%]	[25-40%]
CANAL DIGITAL'S SHARE	[60-75%]	[60-75%]	[60-75%]	[60-75%]	[60-75%]
GROWTH VIASAT		[XXX]	[XXX]	[XXX]	[XXX]
GROWTH CANAL DIGITAL		[...]	[...]	[...]	[...]
TOTAL GROWTH		[...]	[...]	[...]	[...]
GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT'S GROWTH IN %		[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL'S GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT'S SHARE OF TOTAL GROWTH IN %		[...]	[...]	[...]	[...]
CANAL DIGITAL'S SHARE OF TOTAL GROWTH IN %		[...]	[...]	[...]	[...]

Table 8: Number of basic tier subscriptions at the end of the year

	2002	2003	2004	2005	2006
VIASAT START	[XXX]	[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL LOCAL	[...]	[...]	[...]	[...]	[...]
TOTAL BASIC TIER SUBSCRIPTIONS	[...]	[...]	[...]	[...]	[...]
SHARE OF TOTAL DTH MARKET	[20-40%]	[20-40%]	[20-40%]	[20-40%]	[20-40%]
VIASAT'S SHARE OF BASIC TIER SUBSCRIPTIONS	[25-45%]	[25-45%]	[25-45%]	[25-45%]	[25-45%]
CANAL DIGITAL'S SHARE OF BASIC TIER SUBSCRIPTIONS	[55-75%]	[55-75%]	[55-75%]	[55-75%]	[55-75%]
GROWTH VIASAT		[XXX]	[XXX]	[XXX]	[XXX]
GROWTH CANAL DIGITAL		[...]	[...]	[...]	[...]
TOTAL GROWTH		[...]	[...]	[...]	[...]
GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT GROWTH IN %		[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT'S SHARE OF TOTAL GROWTH		[...]	[...]	[...]	[...]
CANAL DIGITAL'S SHARE OF TOTAL GROWTH		[...]	[...]	[...]	[...]

*This table includes the subscribers to Canal Digital's Local package and Viasat's Start package

Table 9: Number of subscriptions to family packages at the end of the year

	2002	2003	2004	2005	2006
VIASAT SILVER	[XXX]	[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL FAMILY	[...]	[...]	[...]	[...]	[...]
TOTAL FAMILY SUBSCRIPTIONS	[...]	[...]	[...]	[...]	[...]
SHARE OF TOTAL DTH MARKET	[15-35%]	[15-35%]	[15-35%]	[15-35%]	[15-35%]
VIASAT' SHARE OF FAMILY SUBSCRIPTIONS	[0-30%]	[0-30%]	[0-30%]	[0-30%]	[0-30%]
CANAL DIGITAL'S SHARE OF FAMILY SUBSCRIPTIONS	[70-100%]	[70-100%]	[70-100%]	[70-100%]	[70-100%]
GROWTH VIASAT		[XXX]	[XXX]	[XXX]	[XXX]
GROWTH CANAL DIGITAL		[...]	[...]	[...]	[...]
TOTAL GROWTH		[...]	[...]	[...]	[...]
GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT GROWTH IN %		[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT'S SHARE OF TOTAL GROWTH		[...]	[...]	[...]	[...]
CANAL DIGITAL'S SHARE OF TOTAL GROWTH		[...]	[...]	[...]	[...]

*This table includes the subscribers to Canal Digital's Family package and Viasat's Silver package

** Note that Viasat's Silver package was replaced by Viasat A la Carte on 1 January 2002 and that the Viasat's Silver package was re-introduced at the beginning of 2003 (see section 9.1 above)

Table 10: Number of subscriptions to packages without premium pay-TV channels:

	2002	2003	2004	2005	2006
VIASAT	[XXX]	[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL	[...]	[...]	[...]	[...]	[...]
TOTAL NON-PREMIUM SUBSCRIPTIONS	[...]	[...]	[...]	[...]	[...]
SHARE OF TOTAL DTH MARKET	[45-65%]	[45-65%]	[45-65%]	[45-65%]	[45-65%]
VIASAT'S SHARE OF NON-PREMIUM SUBSCRIPTIONS	[0-35%]	[0-35%]	[0-35%]	[0-35%]	[0-35%]
CANAL DIGITAL'S SHARE OF NON-PREMIUM SUBSCRIPTIONS	[65-100%]	[65-100%]	[65-100%]	[65-100%]	[65-100%]
TOTAL GROWTH		[...]	[...]	[...]	[...]
GROWTH IN %		[...]	[...]	[...]	[...]
GROWTH VIASAT		[XXX]	[XXX]	[XXX]	[XXX]
GROWTH CANAL DIGITAL		[...]	[...]	[...]	[...]
VIASAT GROWTH IN %		[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT'S SHARE OF GROWTH		[...]	[...]	[...]	[...]
CANAL DIGITAL'S SHARE OF GROWTH		[...]	[...]	[...]	[...]

*This table includes the subscribers to Canal Digital's Local and Family packages and Viasat's Start and Silver packages

Table 11: Number of subscriptions to packages with premium pay-TV channels at the end of the year:

	2002	2003	2004	2005	2006
VIASAT	[XXX]	[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL	[...]	[...]	[...]	[...]	[...]
TOTAL SUBSCRIPTIONS	[...]	[...]	[...]	[...]	[...]
SHARE OF TOTAL DTH MARKET	[35-55%]	[35-55%]	[35-55%]	[35-55%]	[35-55%]
VIASAT'S SHARE OF PREMIUM SUBSCRIPTIONS	[40-60%]	[40-60%]	[40-60%]	[40-60%]	[40-60%]
CANAL DIGITAL'S SHARE OF PREMIUM SUBSCRIPTIONS	[40-60%]	[40-60%]	[40-60%]	[40-60%]	[40-60%]
TOTAL GROWTH		[...]	[...]	[...]	[...]
VIASAT		[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL		[...]	[...]	[...]	[...]
GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT GROWTH IN %		[XXX]	[XXX]	[XXX]	[XXX]
CANAL DIGITAL GROWTH IN %		[...]	[...]	[...]	[...]
VIASAT'S SHARE OF TOTAL GROWTH		[...]	[...]	[...]	[...]
CANAL DIGITAL'S SHARE OF TOTAL GROWTH		[...]	[...]	[...]	[...]

*This table includes the subscribers to Canal Digital's Canal+ and Entertain packages and Viasat's Gold package

10 OVERVIEW OF RETAIL PRICES FOR PAY-TV CONTENT

142. The table below details the retail prices for different pay-TV packages in Norway per year as at autumn 2006. When comparing prices, due account should be paid to the fact that pay-TV operators regularly use special offers to attract customers. This may have a significant impact on the prices customers are actually charged. In addition, especially in the satellite market, the equipment needed (decoder and satellite dish), is often subsidised if the customers agree to a longer contract period (12 or 24 months). As mentioned above cable operators offer significant discounts to MDUs.
143. The table shows that there are differences in both price levels and pricing structures among cable and DTH satellite operators.

Table 12: The cost of a one-year subscription to different packages offered on pay-TV platforms

	Satellite		Cable	
	Viasat	Canal Digital	GET	Canal Digital
Basic pay-TV package	1 886	1 298	2 338	2 687
Extended bundle	3 086	3 546	4 086	4 475
Premium content package (TV1000)	4 526	-	5 016	5 351
Premium content package (Canal+)	-	3 810	5 376	5 699
Most extensive offers	5 714*	5 754	8 124	8 772
Establishment/start-up fees **	698	698***	****	1 990
All prices from October 2006 given in NOK. Prices include card fees and subscription fees. For further details see Annex 4. * No additional channels provided, only additional services ** New customers pay a start-up fee. This fee normally includes the card fee for the first 6 months. *** Start-up fee Local 1298 **** = Not stated				

144. It is noted that the lowest price available for the Canal+ bundle on satellite platform is NOK 3.810. The lowest price in the cable network is NOK 5.699, 150 % of the satellite price. The basic packages of the cable operators appear more extensive in terms of channel offerings than the packages offered by the DTH satellite operators (for details see Annex 4).

11 THE ISSUE OF INTEROPERABILITY

145. NorDig is a voluntary cooperation launched in 1997 between Nordic television and telecom companies with the aim of formulating and following a common strategy in the run-up to the introduction of digital television in the Nordic countries. The goals of this collaboration were to make the transition from analogue to digital television reception as simple as possible for Nordic viewers, to avoid or eliminate

technical hindrances which might block viewers' access to the various companies' output, and to make the transitional period with parallel analogue and digital transmissions as short as possible.

146. Through the NorDig co-operation a Nordic standard technical specification for digital decoders, based on a so-called open interface, to ensure interoperability across the Nordic area was agreed in March 2001. Canal Digital has maintained throughout the procedure in the present case that it has supported interoperability.
147. Part of the NorDig agreement is the use of a common interface, implying that all set-top boxes should be supplied with an additional common interface slot allowing for the use of Conditional Access Modules (CAM or CA-modules) to decode different signals.
148. According to Canal Digital, Viasat has supplied the market with proprietary decoders without a common interface slot, thus disregarding the NorDig principles.
149. Canal Digital has maintained that:

“ViaSat launched its digital distribution in February 2000. Canal Digital started in 1998. To receive Canal Digital's signal on an Open-TV [Viasat] decoder, a consumer need a card and a conditional access module (CAM) from Canal Digital. To receive Viasat's signal on a Media Highway [Canal Digital] decoder, a consumer need a card and a CAM from ViaSat. When Viasat launched their digital distribution, Canal Digital Norge started supporting cards and CAMs to consumers with Viasat-decoders. Viasat did, however, not support cards and CAMs to consumers with Canal Digital-decoders. This forced consumers to buy Viasat-decoders, because it was the only way for them to receive channels from both CD and Viasat.

In May 2000, Viasat stated that they would not deliver smartcards or CAMs to consumers who owned CD-decoders.

During June 2000, CD contacted Viasat several times to solve the problem. CD initiated a meeting, and in the meeting Viasat was offered access to distributing TV2, if CD was offered distribution right of TV3. This proposal was turned down by ViaSat.

During the start of July 2000, CD called Viasat several times and asked them to support cards and CAMs to the market, without any result. As a temporarily counter-action, CD stopped supporting cards and CAMs in the middle of July. By the end of September, the parties came to an agreement.

From the beginning of October 2000, CD therefore again supplied cards and CAMs to all consumers that bought Viasat-decoders. Viasat, however, supplied cards to all consumers that bought CD-decoders, but they did not send out CAMs. They stated that dealers could sell CAMs themselves, as long as the CAMs were approved by Viaccess. They knew by then, that there were no Viaccess-approved CAMs available. They also knew that very few companies were importing CAMs and that these companies were all smaller companies with very limited customer service, which reduced the availability of Viaccess CAMs.

In September 2001, the new CAMs were ready. Grundig ordered 50.000 CAMs in order to sell these on the Nordic market. When Grundig launched the product, Viasat immediately stopped delivering cards to consumers who had bought other decoders than their own. After 3 weeks, Viasat stated that they would deliver the CAMs themselves, and took over the order from Grundig. They started delivering CAMs in Norway November 2001. By taking control of these deliveries Viasat gets control over the pricing of the CAMs, which allows for higher prices in order to get customers to buy Viasat decoders and Canal Digital CAMs instead. In addition, Viasat gets more control with respect to the dealers' activities. The dealers receive more commission if they sell a Viasat subscription with a Viasat decoder than if they sell a Viasat subscription with a Canal Digital decoder (and Viasat CAM).”⁸²

150. From January 2001, Viasat sent out 130 000 “free” decoders to their Gold subscribers. In return the customer had to buy a subscription for a specific period of time (12 or 24 months). These decoders did not have a common interface slot for other programme cards.⁸³ From March 2001 the supply of these decoders was not in line with the specifications from NorDig.
151. Canal Digital has maintained that if Viasat had followed the NorDig principle of supplying decoders with a common interface slot, no consumers would have had problems in getting access to all channels, regardless of DTH platform.⁸⁴
152. In 2004 Viasat implemented a proprietary decoder solution when it converted from Viaccess to NDS/Videoguard. Canal Digital has explained that conditional access modules for receiving Viasat-channels were no longer available. A number of customers had, until then, both programme cards in one set-top box. Because of the conversion to NDS, these customers had to buy a new set-top box in order to gain access to Viasat channels. Customers were offered a free set-top box if they entered into a pay-TV subscription from Viasat (probably a Gold subscription).⁸⁵
153. Canal Digital has stated that conditional access modules from NDS exist and are working satisfactory, that professional users (e.g. cable network operators) are using NDS modules with exactly the same technology and that it seems to be a policy-based decision not to make NDS-CA modules available for the consumers.⁸⁶
154. Canal Digital has maintained that all boxes based on Canal Digital's technology have been produced with two card slots, one for the Canal Digital-card and one common interface slot for other operators (Viasat). In addition, it has been Canal Digital's intension to deliver card and CA-modules to other set-top-boxes (Viasat-boxes). However, when Viasat converted to NDS-encryption technology, Viasat stopped delivering cards and CA-modules to other boxes than their own, and Canal Digital was forced to do the same.⁸⁷
155. According to Viasat, until 2003 it used the Viaccess Conditional Access (CA) System, but was suffering extensive piracy problems on different levels. As a result of this piracy the number of Viasat subscribers was not increasing, while the

⁸² Comments from Canal Digital, dated 21 December 2001, pages 38 and 39 [225916].

⁸³ Comments from Canal Digital, dated 21 December 2001, page 41 [225916].

⁸⁴ Comments from Canal Digital, dated 21 December 2001, page 41 [225916].

⁸⁵ Reply form Canal Digital, dated 14 March 2005, page 12 [313519].

⁸⁶ Reply form Canal Digital, dated 14 March 2005, page 13 [313519].

⁸⁷ Reply form Canal Digital, dated 14 March 2005, page 19 [313519].

programming was still being viewed by pirates. This had a financial impact on right holders, paying subscribers and Viasat itself. In order to combat these problems and to secure its content, Viasat changed access system in 2003 to NDS' Videoguard CA-system the alleged world leader in CA Systems. In Viasat's view, the extent of the piracy problem was probably relatively constant until migration to NDS.

156. As part of its security strategy, NDS provides the Videoguard system embedded in the set-top box. However, due to security issues associated with the common interface, NDS does not according to Viasat authorise Videoguard to be integrated into CAMs for use by residential consumers. Viasat has maintained that it does not impose any system of programme card locks in the set-top boxes that it approves, so owners of set-top boxes containing a common interface may still use a CA-module in their set-top box if they terminate their Viasat subscription. To Viasat's knowledge NDS has no requirement that a common interface should not be supported in a box containing embedded Videoguard.⁸⁸
157. Viasat has pointed out that there are no legally binding agreements concluded between the NorDig-members in relation to the Common Interface and the use of CA-modules, only a statement of intention from 2002. It also noted in 2005 that the very issue of CA-modules had been the subject of in-depth discussions under the auspices of NorDig and has meant that the NorDig cooperation has not progressed during the last two years. Viasat was of the opinion that the most recent NorDig statement of intention was out of pace with technical advances and therefore outdated. According to Viasat this opinion is supported by the fact that none of the NorDig members were complying with the NorDig guidelines. In this regard Viasat made reference to minutes of the NorDig meeting held on 1 July 2004. According to these minutes Viasat said at the meeting that the prices of set-top boxes had now become quite low and therefore it was no longer that costly to have two set-top boxes.⁸⁹
158. In 2005, Viasat further maintained that Canal Digital did not support CA-modules for Viasat set-top boxes in either Norway or Denmark.⁹⁰
159. Viasat has not provided much information on how the NDS standard was implemented, what the implications were for existing customers and when they were felt. Information from the Norwegian Consumer Council and the press indicates that the implementation of the new standard created significant problems for a number of Viasat customers in 2004.⁹¹

12 THE ANALOGUE TERRESTRIAL COVERAGE OF TV2

160. The Authority has carried out an examination of the terrestrial coverage of TV2 and has requested information from the parties,⁹² the Norwegian Media Authority⁹³ and Norkring⁹⁴ in this regard.

⁸⁸ Reply from Viasat, dated 14 March 2005, pages 23-24 [313632].

⁸⁹ Reply from Viasat, dated 14 March 2005, pages 24 and appendix I [313632].

⁹⁰ Reply from Viasat, dated 14 March 2005, pages 24 [313632]

⁹¹ News article - Viasat-kunder går i svart - forbrukerportalen_no [426509]; News article – Ser svart på Viasat (HegnarOnline) [426517].

⁹² RFI to TV2 dated 4 February 2005 [307722]; RFI to Canal Digital dated 4 February 2005 [307688]; RFI to Canal Digital and Norkring dated 22 June 2006 [378780]; RFI to Viasat dated 4 February 2005 [306896].

⁹³ RFI to the Norwegian Media Authority dated 23 March 2005 [313713].

161. Given that Norkring maintains and operates the analogue terrestrial TV distribution network in Norway it has first-hand information on the terrestrial coverage of TV2. In light of the information collected, the Authority is of the opinion that the information supplied by the system operator, Norkring, is the most reliable that has been obtained. The information provided by the Norwegian Media Authority and the parties to the case tends to refer back to Norkring as a primary source. TV2 itself has declared that it agrees with the statements made by Norkring regarding the terrestrial coverage of TV2.⁹⁵
162. The quality of terrestrial television coverage is measured by the field strength of the signal, given in dB-microvolts per metre (dB μ V/m).⁹⁶ Norkring has calculated the coverage for the different channels in the network. The result shows that NRK1 has coverage of 99,5% of Norwegian households,⁹⁷ NRK2 has coverage of 59,8% and TVN has coverage of [...],⁹⁸
163. The following table shows the viewing quality of TV2 among Norwegian households.⁹⁹ According to Norkring these calculations are based on three recommendations from the International Telecommunication Union (ITU) and specifications from the European Broadcasting Union (EBU):

Table 13: Terrestrial reception quality of TV2

Quality	Signal strength	% of viewers in Norway
Good quality reception	> 64 dB μ V/m	87,7
Reduced quality, including fringe areas	\leq 64 dB μ V/m \geq 50 dB μ V/m	6,0
No coverage	< 50dB μ V/m	6,3

164. As shown in table 13 above, 87,7% of Norwegian TV viewers have good quality reception of TV2 in the terrestrial network.
165. According to Norkring and Canal Digital, this does not imply that the remaining 12,3% of the viewers have no or poor coverage. In the opinion of Norkring and Canal Digital, another 6,0% of viewers have a reduced quality reception of TV2 (at approximately or somewhat above 50 dB μ V/m), which could easily be improved by using a larger antenna and, in some cases, an antenna amplifier.¹⁰⁰

⁹⁴ RFI to Norkring dated 22 November 2005 [350653]; RFI to Canal Digital and Norkring dated 22 June 2006 [378780].

⁹⁵ Letter from TV2 dated 23 August 2006 [385299].

⁹⁶ The calculation is performed using the methodology from the European Broadcasting Union, Technical center, EBU Doc. Tech 3254 (1986), "Planning parameters and methods for terrestrial television broadcasting in the VHF/UHF bands".

⁹⁷ Reply from Norkring dated 7 December 2005 [353596].

⁹⁸ Reply from Norkring dated 7 December 2005 [353596]. The coverage of TVN on the terrestrial network is confidential. According to TVN's website (cf. <http://www.tvnorge.no/tvnorgeinfo/1148678>) the channel has a coverage of 91,2%. This figure probably results from the combination of terrestrial, cable and DTH satellite coverage).

⁹⁹ Reply from Norkring dated 5 December 2005 [353596].

¹⁰⁰ Reply from Norkring dated 7 December 2005 [353596]; Reply from Norkring dated 10 July 2006 [381050]; Reply from Canal Digital dated 16 June 2006 [378663].

166. With this extra equipment, Canal Digital considers on the basis of the information provided by Norkring regarding TV2's coverage on the analogue terrestrial network, that the picture quality is the same at 50 dB μ V/m reception, as it is at 64 dB μ V/m. It considers that such equipment is sold in most major electronic equipment stores and is easily available to customers. Prices seem to vary to a certain degree, but according Canal Digital, the average price for an antenna and/or an amplifier is around NOK 800.¹⁰¹
167. In response to these arguments Viasat has submitted that a much higher number of terrestrial transmitters are used for the distribution of NRK1 than for the distribution of TV2. Viasat maintains that if reception quality could be improved as easily as alleged by Canal Digital there is a strong presumption that this alternative would have been used for the distribution of NRK as this would significantly have reduced the cost of distributing NRK.¹⁰²
168. However, Viasat has not submitted any information which would indicate that the information submitted by Norkring regarding reception quality and coverage on the terrestrial network is factually incorrect. The Authority therefore accepts as a fact that the reception quality technically speaking can be improved as argued by Norkring and Canal Digital at a relatively modest cost.
169. Thus 87,7% of Norwegian TV viewers can receive TV2 with good quality reception and free of charge. A further 6,0% of Norwegian TV viewers live in areas with reduced terrestrial reception quality of TV2, but have the possibility to enhance the reception quality. When the 6,0% of TV viewers in areas with reduced terrestrial reception quality is added to the 87,7% of viewers with good terrestrial reception, the overall figure of the terrestrial reception of TV2 in Norway is around 93,7%.
170. An estimated 6,3% of Norwegian TV households are located in areas where there is no terrestrial coverage of TV2. Customers with no reception of TV2 by way of terrestrial TV distribution make up what is known as the "terrestrial shadow zone" of TV2. If these viewers wish to receive TV2, they must rely on other forms of distribution, e.g. cable or satellite.
171. In Norway there are approximately 1 895 000 TV households¹⁰³ (4 547 000 persons).¹⁰⁴ The number of Norwegian households with terrestrial coverage of TV2 amounts to approximately 1 775 615 (93,7%).¹⁰⁵ Among these households approximately 113 700 (6,0% of all TV households) have been located in areas with reduced terrestrial reception quality of TV2. Some 119 400 Norwegian TV households (6,3%) have been located in TV2's terrestrial shadow zone.¹⁰⁶
172. There are areas where the satellite reception of TV2 (or any other channel) by DTH satellite distribution is not possible. Those areas are known as the "satellite

¹⁰¹ Reply from Canal Digital dated 16 June 2006 [378663].

¹⁰² Email from Viasat dated 14 August 2006 [384642].

¹⁰³ The Authority uses Norkring's calculations which imply an average of 2.4 people in a Norwegian household. Statistics Norway calculates the average number of people in a household to be 2.3. However in the least populated areas, this number is slightly higher (2.5 for Sogn og Fjordane and Rogaland counties).

¹⁰⁴ This is 98% of the Norwegian population. Norway had a total population of 4 640 200 at the end of the first quarter of 2006 (see Statistics Norway at http://www.ssb.no/english/monthly_bulletin/sm02211e.shtml).

¹⁰⁵ See Table 14 above.

¹⁰⁶ Calculated on the basis of the reply from Norkring, dated 7 December 2005 [353596].

shadow”. According to the information provided by Norkring, approximately 3% of the Norwegian population live in areas with satellite shadow. Part of this area is covered by TV2’s analogue terrestrial transmission. Norkring’s calculations show that around 1,8% of the Norwegian population live in the satellite shadow but have access to TV2 from the analogue terrestrial network. The remaining 1,2% of the Norwegian population who live in the satellite shadow is therefore outside TV2’s terrestrial coverage.¹⁰⁷ This amounts to around 22 740 TV households. Thus, of the 119 400 Norwegian TV households located in TV2’s terrestrial shadow zone around 97 000 households remain which cannot receive TV2 via terrestrial distribution and which are potential DTH satellite customers.

173. Viasat has pointed out that vacation/holiday homes should, due to their large number (400 000), be considered when assessing TV2’s terrestrial shadow zone. Viasat claims that these vacation homes are largely located in rural and remote areas and that DTH distribution is also required for these locations to a large degree.¹⁰⁸ Viasat states that this is also why both Canal Digital and Viasat introduced during the spring of 2006 a new product “Multi-subscription” (*Multiabonnement*) designed to attract the increased number of customers with vacation homes. With “Multi-subscription” subscribers are granted a rebate if buying a distribution package for two different locations.¹⁰⁹
174. Conversely, Canal Digital alleges that a considerable proportion of Norwegians do not seek any TV distribution for their vacation homes (be it DTH satellite or any other form of TV distribution), since they often want to have a different lifestyle there than at their permanent homes. In addition Canal Digital alleges that those vacation homes that tend to have a more “house-like” standard are often situated in more densely built cottage areas which, even although they are rural, often have the infrastructure necessary to receive cable and SMA-TV networks (which include TV2 as one of the channels on offer).
175. Furthermore, Canal Digital argues that the newly introduced product, “Multi-subscription”, is not just targeted at vacation homes, but also to different rooms in the same house. Finally, Canal Digital has maintained that there has been no significant demand for this product.¹¹⁰
176. TV2 has pointed out that the Ministry of Cultural and Church Affairs initially accepted that TV2 should only have an obligation to cover 86% of households by terrestrial signals and does not have any special obligation to cover cottages and vacation homes.¹¹¹
177. It has not been possible to obtain reliable information on the extent to which vacation homes are located inside or outside the TV2 terrestrial shadow zone, inside or outside the satellite shadow, or the extent to which vacation home owners wish to receive DTH satellite television at their vacation homes. Thus no information in the Authority’s possession indicates that vacation homes would be important to the assessment of the present case.

¹⁰⁷ Reply from Norkring, dated 7 December 2005, question 4 [353596].

¹⁰⁸ Reply from Viasat, dated 29 June 2006, page 5 [380036].

¹⁰⁹ Email from Viasat, dated 14 August 2006 [3846425].

¹¹⁰ Comments from Canal Digital, dated 23 August 2006, to submission by Viasat [385302, page 3].

¹¹¹ Letter from TV2 dated 23 August 2006 [385299].

13 TV VIEWING IN NORWAY

178. In the table below, the viewer shares of the different channels are given for the years 1997 – 2005 as a percentage of total viewing time.

Table 14: Viewer shares¹¹²

Viewer shares for TV channels available to Norwegian viewers in per cent									
	1998	1999	2000	2001	2002	2003	2004	2005	2006
NRK1	38.4	37.1	37.7	38.1	39.5	40.6	40.9	40	40
NRK2	2.5	2.7	2.8	2.9	2.9	3.3	3.3	4	4
TV2	29.9	31.1	31.7	31.4	31.7	29.0	29.7	29	30
TVN	8.4	8.1	9.5	10.1	9.4	10.0	9.2	11	10
TV3	7.3	8.3	7.8	6.7	6.2	6.4	6.3	6	6
TV4	-	-	0.8	0.8	0.8	0.6	0.5	-	-
Others*	13.5	12.7	9.7	10	9.5	10.1	10.6	10	11

* “Others” includes all other channels which can be viewed in Norway including special interest channels and premium pay-TV channels

179. It is observed that combined the three general interest channels (NRK1, NRK2 and TV2) have accounted for 73-74% of all viewing time in recent years. The viewing shares of these channels were relatively stable during the period between 1998 and 2006. The largest channels, NRK1 and TV2, together have had around 70% of total viewing time, while TV2 alone has had a viewing share of around 30%.

180. Some age groups watch more TV than others. TV2 is Norway’s most popular television channel for those who are between 12-34 years old while NRK1 is the most popular television channel for older viewers. Overall, TV2 and NRK1 each enjoy viewing times that are significantly higher than any other channels. This is illustrated in table 15.

Table 15: Viewing time among different age groups in per cent of total viewing time in 2006¹¹³

Channel/ Age group	NRK1	NRK2	TV2	TVN	TV3	ZTV	TV2 Zebra	Others
3-6	45	1	19	4	4	0	1	27
7-11	36	2	27	7	3	0	1	25
12-19	20	3	34	17	11	1	2	13
20-34	26	4	33	14	10	1	2	11
35-44	34	4	31	12	8	1	2	10
45-54	42	4	30	9	4	1	2	8
55-64	49	4	28	7	4	0	1	7
65+	57	4	26	6	2	0	1	5

¹¹² European Audiovisual Observatory 2002, 2003, 2004 and 2005 Yearbook, volume 2, table T.9. When comparing viewer shares for television channels regard has to be paid to the existence of different “universes” for measuring market shares. The universe used in the table above is “all viewers”. More detailed information is provided in Annex 2. For 2005 and 2006 figures have been obtained from Media Norge for the 12+ universe: <http://medienorge.uib.no/?cat=statistikk&medium=tv&queryID=219>.

¹¹³ The information in Table 15 has been obtained from MedieNorge [426969]

All 12+	40	4	30	10	6	1	1	9
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181. Another way to measure the relative importance of TV channels is to analyse the percentage of the population watching different TV channels on a daily basis. 60,3% of the Norwegian population watch TV2 daily. NRK's channels are viewed by 66,1% of the population every day¹¹⁴.
182. The following table shows the viewing time for the Norwegian TV channels in minutes per day (average for 2005) per channel, both for those customers who receive the channels in the terrestrial network (viewers with no other TV supplier), and for those who receive the channels via satellite.

Table 16: Average viewing time in minutes per day for 2005¹¹⁵

	Terrestrial	Satellite
NRK1	81	61
NRK2	4	7
TV2	51	52
TVN	17	18
TV3	N. A.	6
Other	1	22
Total TV viewing time	154	166

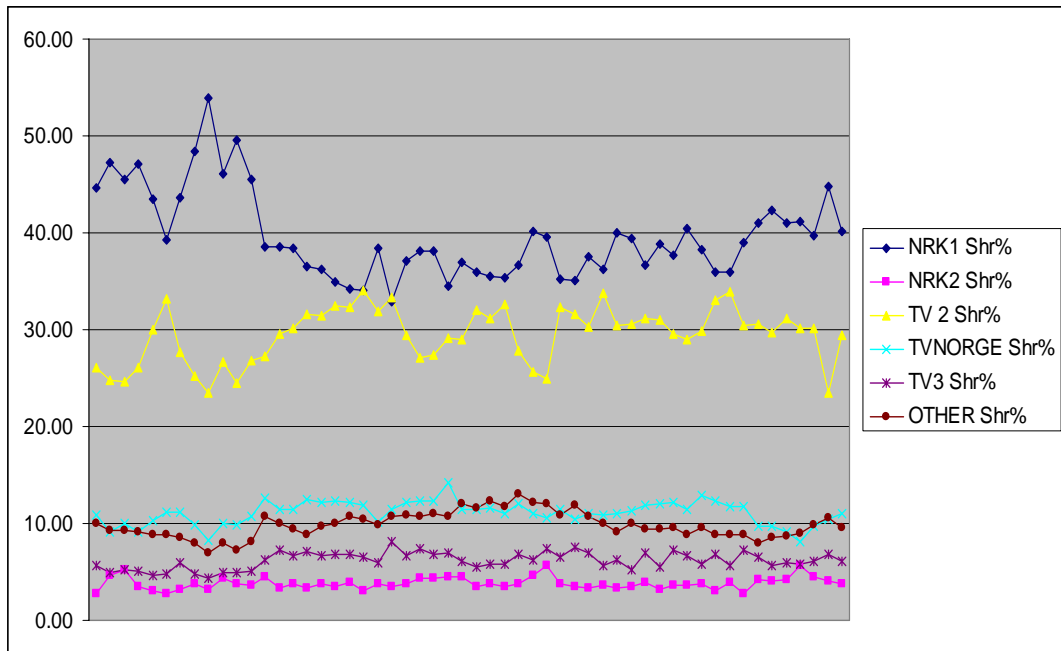
183. As can be seen from table 16, the viewing time for TV2 is almost the same for the customers who have chosen a DTH satellite platform and for those who only receive free-to-air television channels (NRK1, NRK2, TV2 and TVN).¹¹⁶ Viewers on the satellite platform spend significantly less time on watching NRK than viewers on the terrestrial platform. Further, the table shows that even if Norwegian TV viewers pay to receive additional pay-TV content on the DTH satellite platforms, they still spend most of their TV viewing time watching the general interest channels TV2, NRK1, NRK2 and TVN.
184. The chart below reflects the average viewing time for each individual channel. Each channel's share of viewing time is based on the average percentage viewing time on one channel of the total average viewing time of all the channels. The graph also illustrates the competitive relationship between the different channels. As can be seen from the graph, there appears to be a negative co-variance between the share of total viewing time for TV2 and NRK1 respectively. That is to say when NRK's share of viewing time increases TV2's share of viewing decreases and vice versa. This illustrates that TV2 and NRK1 compete for the same TV audience.

¹¹⁴ TNS Gallup September 2005 [428573].

¹¹⁵ From TNS Gallup [364362]. For daily numbers and a graphical analysis, see Annex 3.

¹¹⁶ The data does not include TV2 Zebra as the channel was launched autumn 2005 only.

Viewing shares for different channels for 2005 on a weekly basis¹¹⁷



Universe: 12+ (TV viewers who are 12 years or older)

185. Viasat has referred to a market survey among its analogue customers in 2002. According to this survey the two national public broadcasters NRK1 and TV2 were regarded as the two most important TV-channels.

186. The results of the survey as submitted by Viasat are shown in the table below.

Table 17: The most important TV channels according to a Viasat survey¹¹⁸

	NRK1	NRK2	TV2	TV3	TVN
Most important	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Second important	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Third important	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Fourth important	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]
Fifth important	[xxx]	[xxx]	[xxx]	[xxx]	[xxx]

187. [business secrets

]Viasat argues that the consequence hereof is that a Norwegian DTH operator needs both TV2 and NRK in order to survive as a viable competitor and that being the only Norwegian distributor without access to TV2, Viasat has a serious competitive handicap.¹¹⁹

¹¹⁷ Source: Norsk Gallup 2005.

¹¹⁸ Letter from Viasat, dated 29 January 2003, pages 3-4 [99262].

¹¹⁹ Letter from Viasat, dated 29 January 2003, pages 3-4 [99262].

14 THE PRICE INCREASES OF CANAL DIGITAL IN 2004 AND 2006

188. In March 2005 Canal Digital reported that its pricing strategy and fee structure had remained unchanged since the end of 2002.¹²⁰
189. While there had been no changes in the pricing strategy, after the re-negotiation of the TV2 agreement in 2003 Canal Digital had to pay a higher fee to TV2. As a result Canal Digital increased the annual card fee from NOK 495 to NOK 595 to subscribers to all packages other than the Local package and from NOK 495 to NOK 895 to holders of cards giving access only to the Local package.
190. According to Canal Digital the annual card fee should cover the cost of distributing free-to-air channels, including the cost of SMS,¹²¹ customer service, update and maintenance of smart card and encryption as well as other distribution costs.
191. Canal Digital has no monthly subscription fee for cardholders who only have access to the Local package. The Family package had a monthly fee of NOK 211 in March 2005. In November 2002, the price was NOK 169. The monthly fee of the CANAL+ package was NOK 251 (NOK 239 in November 2002) and the monthly fee of the Entertain package was NOK 413 (NOK 379 in November 2002). From 1 January 2005, VAT was increased by 1% in Norway, which also had some effect on the package prices.
192. In November 2005, Canal Digital sent out letters to its customers announcing price increases, as of 1 January 2006, for its different packages. The most significant increase was for the Local package for which the annual card fee increased by 45% (the price of the card fee rose from NOK 899¹²² to NOK 1 298 per year). The price increase for the Family package in 2006 was 10% (from NOK 3 131 to NOK 3 446 per year). For the premium packages the price increase was around 2%.
193. Canal Digital has explained that it decided to continue to offer a small package consisting only of the basic Norwegian channels in order to give customers as wide a choice as possible. The alternative would have been to follow other operators' price and packaging strategy, for example cable companies and IPTV suppliers, which sell a basic package with 15-25 channels as their smallest package for a monthly price of approximately NOK 200, or more.
194. In response to the Authority's request for information, Canal Digital claimed that:
- “The main reason behind the planned price increase is that TV2 earlier this year had a tendering procedure for the rights to DTH distribution of TV2. Since two highly interested distributors competed for these rights, the price increased substantially (as it also did when the exclusivity was lifted in 2003)”.*¹²³
195. According to Canal Digital, the main reason why the price for the Local package increased more than the price for the other packages was that the programme costs

¹²⁰ Reply from Canal Digital dated 14 March 2005 [313519]. See pages 20-21.

¹²¹ Subscriber management system, a method used by service providers to manage the delivery of customer services.

¹²² The price of this package increased by NOK 4 in 2005 following the increase in the VAT rate.

¹²³ Reply from Canal Digital, dated 5 December 2005, page 2 [353917].

related to the Norwegian channels had increased substantially compared to international channels.

196. There were also other costs connected to the distribution of the Local package that needed to be covered if Canal Digital were to continue with this offer. Canal Digital maintained the following:

“To control piracy, Canal Digital must change existing cards with new cards using more modern chip-technology. In January 2005, Canal Digital conducted such a card swop on the Norwegian market. More and more broadcasters furthermore have concrete requirements with respect to decoders, in particular related to so-called digital output and Digital Rights Management (DRM-solutions) in order to protect the signal from copyright infringements. These circumstances also increase costs.

From 2004 to 2005 Canal Digital raised the price for the Local package with NOK 4 due to a increase in VAT by 1 %. The NOK 4 did not cover that particular cost increase, but Canal Digital wanted the price to remain below NOK 900 for competitive purposes. The remainder of that cost increase is included in the current price increase. There has also been an increase in indirect costs, mainly IT costs and management fee, see question 4 below. As shown under question 4, there furthermore was an increase in variable SMS costs in 2004. This was due to increased use of air freight and increased strain on customer services due to the price increase in 2003/2004.

The costs related to customer service have shown a steady growth over the last years. Customers subscribing to the Local package only consult customer services just as often as pay-TV customers. Since consultations related to the customers pay-TV subscription to a larger degree may be solved by the customer itself on Canal Digital’s web-pages, the customers mainly consult customer services with questions related to technical installation, technical problem-solving, invoicing, address changes and product information.

Customers with the Local package only represent a substantial part of the total number of consultations. Canal Digital previously believed this to be different and allocated a larger part of these costs to pay-TV customers. In order for pay-TV customers not to subsidise Local customers, it has therefore been decided to allocate a larger part of these costs to Local customers.

Viasat is Canal Digital’s competitor in the DTH market. Over the last years Viasat has had a program-package structure similar to Canal Digital’s. However, Viasat has had a higher price on the cheapest package - Viasat Start. This package currently has an annual price of NOK 1.527 (NOK 1.826 the first year), compared to Canal Digital’s price, which will be NOK 1.298. Since both Viasat and Canal Digital are commercial companies, both companies seek to maximize profits. Since its competitor for several years has had significantly higher prices, Canal Digital has therefore decided to increase prices in order to cover its costs and optimize profits. This is of course normal and legitimate behaviour in any commercial market.”¹²⁴

¹²⁴ Reply from Canal Digital, dated 5 December 2005, page 3 [353917].

II. LEGAL ASSESSMENT

15 RELEVANT MARKETS

197. According to the Authority's Notice on the definition of the relevant market, the main purpose of market definition is to identify in a systematic way the competitive constraints that the undertakings involved face. The objective of defining a market in both its product and geographic dimension is to identify those actual competitors of the undertakings involved that are capable of constraining those undertakings' behaviour and of preventing them from behaving independently of effective competitive pressure.¹²⁵
198. A relevant product market comprises all those products and/or services which the consumer, by reason of the products' characteristics, their prices and their intended use regards as interchangeable or substitutable.¹²⁶
199. The relevant geographic market comprises the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogeneous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas.¹²⁷

15.1 The views of the parties

200. Viasat believes that the transmission of broadcasting signals to end-users (DTH customers and SMA-TV customers) via satellite constitutes a separate market.¹²⁸ Nevertheless, Viasat considers that a significant part of the viewers has a genuine choice between DTH and cable distribution. However, in Viasat's view the distinction between cable and DTH distribution is of little importance, as Telenor/Canal Digital is a dominant distributor in any potential delimitation of the market. Viasat considers that the competitive constraints from analogue terrestrial TV distribution on DTH and cable distributors are negligible.¹²⁹
201. Viasat has claimed that, due to the importance of TV2 for the TV distribution platforms, it forms a separate services market (at the wholesale level). Viasat has alleged that TV2 has a "gateway" position *vis-à-vis* the DTH satellite distributors and it is a "must have" channel for them. On this basis, it has claimed that TV2 constitutes a separate relevant market.¹³⁰
202. As regards TV distribution to end-users, Canal Digital has maintained that there are competitive constraints from cable TV distribution on the activities of DTH operators. However, for a number of reasons Canal Digital finds it questionable whether these constraints imply that the two distribution platforms belong to the same

¹²⁵ The EFTA Surveillance Authority's notice on the definition of the relevant market for the purposes of EEA competition law (OJ L 200/48 of 16 July 1998 and EEA Supplement to the OJ No 28, 16.7.1998, p. 3), paragraph 2.

¹²⁶ Notice on the definition of the relevant market, cited above, paragraph 7.

¹²⁷ Notice on the definition of the relevant market, cited above, paragraph 8.

¹²⁸ Reply from Viasat, dated 5 November 2002, page 13 [101300].

¹²⁹ Reply from Viasat, dated 14 March 2005, page 4 [313632].

¹³⁰ Letter by Viasat, dated 14 January 2004, page 2 [185531]. See also Reply from Viasat, dated 14 March 2005, pages 31 to 35, where Viasat provides an analysis of the potential competitive constraints on TV2 [313632].

relevant product market. Canal Digital has stated that due to the capacity constraints of the current analogue distribution network, this distribution form does in general not constitute a competitive alternative to distribution by DTH satellite or cable.¹³¹

203. TV2 has not stated any views with regard to the scope of the relevant markets in this case.

204. Canal Digital Kabel-TV is of the opinion that DTH satellite and cable do not belong to the same market.¹³² UPC (now GET), on the other hand, is of the opinion that cable and satellite are substitutes for each other both from the perspective of the broadcaster and of the viewer. It is therefore of the view that the two transmission forms compete for the same customers.¹³³

15.2 Relevant product market at the retail level

205. Consumers can receive TV signals via the terrestrial network, cable networks, SMA-TV or DTH satellite distribution. There are also some emerging platforms such as IPTV and DTT.

206. The first issue to address is whether the retail distribution of TV services on DTH satellite platforms should, for the purposes of the present case, be regarded as a distinct market or part of a wider market which also comprises other types of distribution platforms.

15.2.1 Distinction between distribution platforms

207. In *TPS* the Commission took the view that at the time of assessment, and given the factual circumstances of that case, the French pay-TV market comprised the three methods of transmission: terrestrial, satellite and cable.¹³⁴

208. The Commission has since assessed the retail distribution of TV services in the Nordic countries on several occasions. However, it has never needed to take a final position on whether there has been one overall market for retail distribution of TV services in the Nordic countries comprising all the three modes of transmission.

209. In *Telia/Telenor*,¹³⁵ the Commission considered in the context of merger control whether pay-TV *via* cable and pay-TV *via* satellite might be substitutes but did not conclude on a precise market definition. A possible distinction between different transmission modes at retail level was discussed at some length in *Telenor/Canal+/Canal Digital*, although the focus of that case was on the provision of premium pay-TV services.¹³⁶ While various elements tended to show that in the Nordic countries a single market for the retailing of pay-TV services irrespective of the transmission mode might be emerging, the Commission did not consider it necessary to definitely conclude whether this actually was the case. In a recent merger

¹³¹ Reply from Canal Digital, dated 14 March 2005, pages 4 to 5 [313519].

¹³² Reply from Canal Digital Kabel-TV, dated 13 November 2002, page 5 [101022].

¹³³ Reply from UPC, dated 7 November 2002, page 3 [101793].

¹³⁴ Commission decision of 3 March 1999 in Case No IV/36.237 (OJ L 90, 02.04.1999, p. 6), paragraph 30. The decision was upheld by the Court of First Instance in Case T-112/99 *Métropole Télévision (M6) and others v Commission*, [2001] ECR II-2459.

¹³⁵ Commission decision of 13 October 1999 in Case No IV/M.1439 (OJ L 40/1, 09.02.2001), paragraphs 269 et seq.

¹³⁶ Commission decision of 29 December 2003 in Case No COMP/C.2/-38.287, paragraphs 30 onwards.

case, *Providence/Carlyle/UPC Sweden*, the Commission found that there were certain specific features of the Swedish market which would tend to show that the retail market for cable TV might constitute a separate market from other platforms such as distribution by satellite. The exact product market definition was however left open.¹³⁷

210. In a decision of 28 April 2004 regarding Canal Digital's exclusive right to distribute TV2 Zulu in Denmark, the Danish Competition Authority concluded that cable TV and DTH satellite distribution belonged to separate markets. According to the Danish Competition Authority, cable and DTH satellite platforms could not be considered substitutes in Denmark, due to the different coverage of the two distribution forms and the fact that some households' co-operatives were prohibited from installing their own satellite dishes.¹³⁸ In a more recent decision, the Danish Competition Authority has revisited this question but did not need, in the end, to take a definite position on the issue.¹³⁹
211. In the merger case *Telenor/Canal Digital* the Norwegian Competition Authority considered whether distribution of TV channels *via* DTH satellite distribution was part of the same market as cable, terrestrial and/or other forms of distribution of TV signals.¹⁴⁰ The Norwegian Competition Authority concluded that the DTH satellite platform constituted a separate market, especially for areas that were sparsely populated, due to the high costs in maintaining cable networks in these areas.
212. Recently, the Norwegian post and telecommunications regulator (NPT),¹⁴¹ assessed whether cable and satellite should be considered part of the same market for broadcasting transmission services used to deliver content to end users.¹⁴² The conclusion of NPT's analysis was that, although some households in theory should be able to choose between cable and satellite, this opportunity is in reality limited.¹⁴³ NPT emphasised that many housing cooperatives do not allow residents to install private satellite dishes. Moreover, for users in rural areas with low population density, as well as for some users in residential areas, there are few cable networks that function as alternatives to satellite distribution.

¹³⁷ Commission decision of 2 June 2006 in Case No COMP/M.4217, paragraphs 8 to 12. The specific features mentioned by the Commission was amongst others strong indications in urban areas in so far as big apartment blocks were concerned that satellite was not always a viable alternative. Possible lock-in effects resulting from the agreements contracted between the subscribers and the landlords were also mentioned.

¹³⁸ Danish Competition Authority decision of 28 April 2004 concerning a distribution agreement between Canal Digital and TV2 Zulu, paragraph 30 (Journal nr. 3/1120-0301-0277/MVN/FI).

¹³⁹ Danish Competition Authority decision of 29 March 2006 concerning the placing of TV 3 and 3+ in program packages (Journal nr. 4/0120-0289-0009/SEK/MM).

¹⁴⁰ Norwegian Competition Authority decision A2001-24 of 14 December 2001 concerning Telenor's acquisition of the remaining 50% of the shares in Canal Digital.

¹⁴¹ "Post- og teletilsynet".

¹⁴² Market 18 according to the EFTA Surveillance Authority Recommendation of 14 July 2004 on relevant product and service markets within the electronic communications sector susceptible to ex ante regulation in accordance with Directive 2002/21/EC of the European Parliament and of the Council on a common regulatory framework for electronic communication networks and services, as incorporated into the EEA Agreement (OJ L 113, 27.04.2006, p. 18 and EEA Supplement No 21, 27.04.2006, p. 33).

¹⁴³ Section 3.6.5 of "Analysis of the wholesale market for broadcasting transmission services to deliver broadcast content to end users" of 29 September 2006 available at: http://www.npt.no/iKnowBase/Content/Market_Analysis_M18.pdf?documentID=50097.

213. The conclusion of NPT that cable and satellite distribution are two separate markets at the retail level has been supported by TV2, the Norwegian Competition Authority and Telenor¹⁴⁴ in a national hearing conducted by NPT.¹⁴⁵
214. It would seem to the Authority that in Norway there are several factors which might limit the extent to which cable operators constrain the behaviour of DTH satellite distributors at the retail level. Cable networks in Norway have a limited geographical coverage. Although there are some overlap between cable and satellite in urban areas, there are still nearly 40% of Norwegian households that are not passed by cable, which means that households in these areas have been unable to choose cable as an alternative to DTH satellite reception. The possibilities for DTH satellite customers to switch to cable networks in case of a price increase would therefore seem limited. There are no indications that the price increases of Canal Digital (see section 14 above) have led Canal Digital consumers to switch to cable distribution.
215. Differences in the structure of bundles (the type and number of channels offered) and prices between cable and DTH satellite operators may be a further indication that the two platforms belong to separate markets. Cable operators have offered from thirteen to eighteen channels in their basic package, whereas the two DTH satellite operators have provided from five to eleven channels in comparable packages. Price differences between packages are indicated in table 12 in section 10 above.
216. On the basis of the above analysis the Authority considers that there are certain specific features of the Norwegian market which suggest that during the time period relevant to this case TV distribution on DTH satellite platforms should be regarded as a separate market to TV distribution on cable networks.
217. Since SMA-TV systems are used primarily to distribute television signals to households located in multiple dwelling units that are linked by cable, SMA-TV does not appear to be a substitute to DTH satellite distribution services for the individual consumer. It appears, moreover, that the SMA-TV option is used relatively infrequently by MDUs in Norway and that SMA-TV plays a marginal role as a competitive constraint on DTH satellite distribution in Norway. It is therefore appropriate not to include SMA-TV in the relevant product market.
218. Generally, TV signals are received against a payment by the consumer to the provider of the distribution service. However, reception of TV channels through the analogue terrestrial network has been free of charge. Such distribution is financed either by the mandatory licence fee or advertising revenue. As there is no transaction between the provider of the distribution service and the consumer in case of the distribution of free-TV on the analogue terrestrial platform there is no proper retail market for this distribution service. Moreover, the transmission capacity on the analogue terrestrial network has been limited and its use subject to regulation by public authorities. Therefore Norkring cannot be regarded as a competitor to the DTH satellite distribution services of Viasat and Canal Digital.
219. The fact that public broadcasting channels have been obliged to be available as free-TV on the analogue terrestrial platform may however have an impact on the competitive relationship between the providers of DTH satellite distribution services. E.g. to the extent TV viewers have had the possibility of receiving TV2 on the

¹⁴⁴ No actors in the national hearing opposed the definition of cable and satellite as separate markets, with the exception of UPC, which had some reservations to this definition.

¹⁴⁵ See www.npt.no/pt_internet/venstremeny/hoeringer/smp/nasjonale_hoeringer.html.

terrestrial distribution platform, these TV viewers might have been in a position to use this form of distribution as a supplement to the DTH services to which they subscribe. This may again have an influence on the competitive relationship between the two DTH satellite platforms. This is taken into account in the competition analysis.

220. The Authority considers that the commercial importance of broadband TV is still negligible at this stage. Broadband TV has therefore so far played a very limited role as a competitive constraint on the retail distribution of TV services to consumers on the DTH satellite platform.
221. There has to date not been any distribution of TV channels on the DTT platform in Norway. Such distribution will only take place after the expiry of the 2005 Agreement and has therefore not constituted any competitive constraint on operators of DTH satellite platforms during the period which is relevant to the present case.
222. Having regard to all of the above the retail distribution of TV services on the DTH satellite platform is regarded as a distinct market from other distribution platforms for the purposes of the present case.

15.2.2 Distinction between the different services on the DTH satellite platforms

223. A distinction can be made between premium pay-TV channels, mini pay-TV and free-TV channels. Premium pay-TV channels contain a high proportion of premium film and/or sport content and are financed by subscription fees only. From the TV viewer's point of view this means that they are "advertising free" without commercial breaks.
224. Free-TV channels comprise in principle TV channels which are financed solely by licence fees and/or by advertising revenues. Channels which are financed both by subscription fees and advertising revenues are "mini pay-TV" channels.
225. The distinction between premium pay-TV, mini pay-TV and free-TV channels does not mean that mini pay-TV and free-TV channels are totally devoid of premium content. Free-TV and mini pay-TV channels may in particular contain premium sports content. The degree of premium content is, however, significantly higher on premium pay-TV channels.
226. With regard to pay-TV services on the DTH platform, it is evident that Viasat is the main competitive constraint on Canal Digital. Competition in pay-TV markets is geared towards the attractiveness of the content that can be offered to viewers. There is thus a constant competitive pressure from Viasat on Canal Digital and vice versa for the acquisition of attractive content, be it individual rights such as football rights or TV channels. Canal Digital cannot stop acquiring attractive content for its platform, maintain its prices and reap monopoly profits. Such a strategy would fail because subscribers would switch to Viasat if they regarded the content offered by Viasat as more attractive than the content offered by Canal Digital.
227. Both Canal Digital and Viasat have premium pay-TV channels, mini pay-TV channels and free-TV channels on their platform. These channels have been bundled into different packages. Both Canal Digital and Viasat have had a basic tier which has been offered in the market as a stand alone product, a second tier which has been offered on top of a basic tier (the Family package of Canal Digital and the Silver

package of Viasat) and finally a premium tier which has been offered on top of a basic tier (the Canal+ package of Canal Digital) or on top of the second tier and the basic tier (the Entertain package of Canal Digital and the Gold package of Viasat). TV2 has been placed in Canal Digital's basic tier and thus been included in all packages of Canal Digital (see Annex 4).

228. The way in which channels have been bundled into packages shows a degree of differentiation in the approach of the two platforms. For example, Canal Digital's Local package has had very few channels when compared to Viasat's Start package. Conversely Canal Digital has had more channels in its second tier than Viasat (33 against 26 in October 2006). Moreover, the premium tier of Canal Digital has only included the Canal+ channels and has been offered on top of the basic tier and as an extended bundle on top of the second tier as the Entertain package. Viasat has decided to include a number of sports channels in its Gold package rather than in its second tier thereby making its Gold package more attractive and its Silver package less attractive. In autumn 2006 the Gold package was around NOK 1 000 more expensive per year than Canal Digital's Family package and around NOK 700 more expensive than the Canal+ package but NOK 1 200 cheaper than the Entertain package. Further differentiation is shown in the relatively few channels which can be found on both platforms. Finally, Canal Digital has recently increased the options by which different bundles of channels can be combined by the subscriber.¹⁴⁶
229. It can be questioned whether premium pay-TV channels must be distinguished from other channels as consumers have a higher willingness to pay for the former due to the amount of attractive content on such channels. For example, in a case where competition between operators of premium pay-TV channels was at issue one would be likely to conclude that premium pay-TV channels constituted a separate relevant market.¹⁴⁷
230. However, the focus of the present case is on competition between two DTH satellite platforms and how this competition is affected by the distribution of TV2 on only one of these platforms. A further segmentation of the market into different types pay-TV packages/services which are offered on the DTH satellite platforms at the market definition stage would not appear necessary in order to carry out a proper competition analysis. It is therefore appropriate to regard the relevant product market as an overall market for the provision of pay-TV services on DTH satellite platforms.¹⁴⁸

15.2.3 Conclusion on the relevant retail market

231. In conclusion, in the analysis below the market in which Canal Digital and Viasat offer their pay-TV services on the DTH satellite platform to TV viewers will be regarded as the relevant product market.

15.3 The relevant geographic market at retail level

¹⁴⁶ See paragraph 124 above.

¹⁴⁷ See in particular Commission decision of 29 December 2003 in Case No COMP/C.2/-38.287 *Telenor/Canal+/Canal Digital*, paragraph 26.

¹⁴⁸ This has been the approach by the European Commission in a number of cases. See e.g. Commission decision of 3 March 1999 in Case IV/36.237 *TPS*, cited above, which was upheld by the Court of First Instance in Case T-112/99 *Métropole Télévision (M6) v Commission*, cited above. See also Commission decision of 2 April 2003 in Case No COMP/M.2876 *Newscorp/Telepiù*, paragraphs 18 to 47.

232. Canal Digital and Viasat offer their retail distribution services on DTH satellite platforms to households in Norway. Although both parties are active at a Nordic level, the services offered are directed at the Norwegian audience and are country specific. The geographical scope of the relevant retail market is therefore considered to be Norway.

15.4 The relevant product market at wholesale level

233. The wholesale market for the distribution of TV signals is the market where distributors and broadcasters negotiate the terms and conditions for the distribution of radio and TV signals to end-users. Distributors provide carriage (or transmission) services for signals based on different infrastructures (i.e. cable networks, satellite, DSL networks, (digital) terrestrial networks). Broadcasters are the companies which package radio or TV content, either internally produced or bought from external suppliers, into channels. Whereas broadcasters need transmission services provided by the distributors to reach the end-users (i.e. the viewers), the distributors need the content packaged by the broadcasters to constitute the offer they deliver to their subscribers.¹⁴⁹
234. The outcome of the negotiations between broadcasters and distributors may be that either the broadcaster will pay a fee for the transmission of the signal (“carriage fee”) to the distributor, or alternatively that the distributor will pay royalties to the broadcaster. It may even be agreed that the broadcaster pays a carriage fee and the distributor pays royalties for the distribution of a given channel.¹⁵⁰
235. Suppliers of premium pay-TV channels are of major importance for DTH satellite distributors.¹⁵¹ In particular, recently released movies and live coverage of top sports events are the main drivers for the sale of highly valued pay subscriptions for premium channels.¹⁵² Premium pay-TV channels acquire this content from original rights owners.¹⁵³
236. As regards generic and thematic channels, the Commission has recognised that even if premium channels constitute a key driver for the subscription to pay-TV, other channels are important for pay-TV operators in as much as these various types of channels contribute to rendering pay-TV packages attractive for end consumers.¹⁵⁴
237. In the merger case *Newscorp/Telepiù* the Commission found that the wholesale market for the acquisition of a TV channel may be considered a separate product market, distinguishable from other content acquisition markets.¹⁵⁵ It was not necessary in that case to decide whether the market for acquisition of TV channels should be divided into different markets according to single type of channel, such as generic, thematic, sports, children or news. So far in its decisional practice the Commission has not had reasons to consider a more narrow segmentation of the wholesale market for the acquisition of generic and thematic channels.

¹⁴⁹ Commission decision of 6 September 2006 in Case No COMP/M.4338 *Cinven/Warburg/Pincus/Casema/Multikabel*, paragraph 19.

¹⁵⁰ Op. cit. paragraph 20.

¹⁵¹ See e.g. Commission decision in *Telenor/Canal+/Canal Digital*, cited above, in particular paragraph 152.

¹⁵² See e.g. Commission decision in *Telenor/Canal+/Canal Digital*, cited above, paragraph 26.

¹⁵³ See *Newscorp/Telepiù*, cited above, paragraph 74

¹⁵⁴ See Commission decision in *Newscorp/Telepiù*, cited above, paragraph 74; see also Commission decision in *TPS*, cited above, paragraph 106.

¹⁵⁵ Commission decision in *Newscorp/Telepiù*, cited above, paragraph. 22.

15.4.1 The TV channels which form part of the relevant product market at the wholesale level

238. TV2 is a general interest channel (or generic channel). For the purposes of market definition TV2 must be distinguished from premium pay-TV channels due to the characteristics of supply, features of the type of content offered, and the pricing terms. Suppliers of the latter types of channels are therefore not part of the same relevant wholesale market as TV2.
239. Despite the fact that it is an advertising financed public broadcaster, the bargaining position of TV2 vis-à-vis the DTH satellite distributors is such that it can request the latter to pay significant royalties for the right to distribute TV2 on their platforms. This feature seems to distinguish TV2 from most other TV channels on offer in Norway. Moreover, as a member of EBU TV2 has a number of additional features, described in 6.5 above, which most other channels on offer in Norway do not have.
240. Thus TV2 has a special market position as one of two Norwegian TV channels meeting the requirements for membership in the EBU as a national broadcaster. Moreover, TV2 enjoys, together with NRK, in their capacity as public broadcasters, a special status under the “Television Without Frontiers” Directive,¹⁵⁶ which confers special rights to public broadcasters with regard to events of major importance.
241. In particular, it should be noted that TV2 deliver in-house produced daily news broadcasts covering both national and international current affairs, in the Norwegian language. Daily news is the most watched TV programme category in Norway.¹⁵⁷ Around 1,1 million viewers watched the TV2 news on an average day in 2006.¹⁵⁸ TV2 also provides a range of other programmes specifically targeted at a Norwegian audience either produced in-house or purchased from Norwegian production companies.
242. With these specific features in mind the Authority therefore considers that TV2 must be distinguished from international special interest channels which are not EBU members as well as international general interest channels such as BBC which are EBU members but which do not provide content specifically targeted at a Norwegian audience.
243. Norwegian channels or channels specifically targeting a Norwegian audience from abroad, such as TV3, but which are not EBU members must also be distinguished from TV2. None of these channels have the same features as TV2. Their bargaining position vis-à-vis DTH satellite distributors is therefore significantly different from that of TV2. From the DTH satellite distributors point of view these other channels are not regarded as substitutes to TV2.
244. It is only NRK which shares most of the main features of TV2 and could be in a similar bargaining position as TV2 vis-à-vis the DTH satellite distributors. One could

¹⁵⁶ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (“Television Without Frontiers” Directive), OJ L 298, 17.10.1989, p. 23–30.

¹⁵⁷ See Annex 1.

¹⁵⁸ TV2’s Annual Public Broadcasting Report (“allmennkringkastingsregnskap”) 2006, page 28.

therefore consider that there is a market for the wholesale supply of Norwegian general interest channels for DTH pay-TV.

245. However, while TV2 and NRK are the two most popular TV channels in Norway in terms of viewer shares, the present case shows that the two DTH satellite distributors wish to have both channels on their platforms and that consumers generally wish to receive both channels.
246. Furthermore, the main difference between NRK and TV2 is that NRK is financed by a compulsory TV licence fee which is set by the Norwegian parliament each year while TV2 is advertising funded. There does not appear to be any reason why NRK would not be as commercially interesting for the DTH satellite distributors as TV2. However, it appears that NRK has adopted an output maximising strategy rather than the profit maximising strategy of TV2.
247. The reason for this difference in approach seems to be that NRK, as a state owned public broadcaster financed by licence fees, is not in a position to utilise its full commercial potential on the DTH satellite platform; DTH satellite subscribers in effect then would have to pay twice for NRK, once through the licence fee and once, indirectly, through the DTH satellite distributors' subscription fee.
248. Consequently, if TV2 and NRK had been regarded as substitutes by DTH satellite distributors they would only have acquired the much cheaper rights to distribute NRK instead of fighting for the right to distribute TV2. This shows that TV2 and NRK are not regarded as substitutes from the viewpoint of DTH satellite distributors. It follows that NRK is not in a position to constrain the market power of TV2 insofar as DTH satellite distribution is concerned. NRK and TV2 are therefore not active in the same relevant wholesale market for DTH satellite distribution.
249. From these considerations the Authority has for the purposes of the present case concluded that TV2 must be regarded as the only supplier in the relevant wholesale market.

15.4.2 The distribution platforms which form part of the relevant product market at the wholesale level

250. The differences between platforms at retail level described in 15.2.1 above are also relevant when defining the relevant market at the wholesale level as demand in this market is derived from the demand in the retail market.
251. TV2 is obliged to maintain a certain level of coverage on the analogue terrestrial platform. Neither TV2 nor Norkring can charge TV viewers for the distribution service which is provided by Norkring. TV2's bargaining position vis-à-vis Norkring is therefore very different from its bargaining position vis-à-vis DTH operators.
252. It appears that there are very few households that subscribe to pay-TV services from both cable networks and DTH operators. Moreover, there are regulatory differences between cable distribution and DTH satellite distribution (see sections 7.2 and 7.3 above). TV2 has therefore been in a position to adopt an exclusive distribution strategy vis-à-vis DTH operators even although it is distributed on all cable networks.

253. It follows that the conditions of competition for the wholesale acquisition of the distribution rights to TV2 on the DTH satellite platform are significantly different from the conditions of competition for the wholesale acquisition of the distribution rights to TV2 on other platforms.
254. The Authority therefore considers that it is only the distributors on the DTH satellite platforms which can be included on the demand-side of the relevant wholesale market.

15.4.3 Conclusion on the relevant product market at the wholesale level

255. In conclusion the Authority considers that the relevant wholesale market is the market for the licensing of the rights to distribute the TV2 channel to operators of DTH satellite platforms.

15.5 The relevant geographic market at wholesale level

256. The content supplied by the Norwegian public broadcaster TV2 is directed at the Norwegian audience, with a high emphasis on national/local news, current affairs and entertainment programs in the Norwegian language. The geographical scope of the relevant wholesale market is therefore considered to be Norway.

16 ASSESSMENT UNDER ARTICLE 53 OF THE EEA AGREEMENT

16.1 Introduction

257. Article 53(1) EEA prohibits all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Contracting Parties to the EEA Agreement and which have as their object or effect the prevention, restriction or distortion of competition within the EEA.
258. Article 53(3) EEA provides for an exception from the prohibition in Article 53(1) EEA in case of agreements which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefits, and which do not impose restrictions which are not indispensable to the attainment of these objectives, and do not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products concerned.
259. As stated by the EFTA Court on a number of occasions, Article 53 EEA is identical in substance to Article 85 EC. Thus, Article 6 EEA and Article 3(2) of the Surveillance and Court Agreement are applicable when interpreting Article 53 EEA.¹⁵⁹
260. The contracting parties to the agreements at issue are TV2 Gruppen AS and Canal Digital Norge AS. They mainly derive their turnover from Norwegian consumers. The agreements at issue do not appear to affect trade between EC Member States or competition in the EU to an appreciable extent. The Authority is therefore the competent authority to apply Article 53 EEA in the present case pursuant to Article 56(1)(b) read in conjunction with Article 56(1)(c) and Article 56(3) EEA.

16.2 The alleged infringements of Article 53 EEA

261. In the original complaint of 30 July 2001, Viasat alleged that the exclusive agreement between Canal Digital and TV2 restricted competition severely in the Norwegian DTH-market.¹⁶⁰ Viasat stated that:
- “...most Norwegian TV-viewers undoubtedly want access to both nation-wide public service channels, i.e. TV2 and NRK, CDN is the only alternative for customers wanting only one smart card (and is not satisfied with receiving TV2 analogue, which is still possible for the time being). From a customer’s point of view, therefore, CDN’s and Viasat’s offers are not comparable.”¹⁶¹*
262. Viasat has further argued that the very object of the exclusive agreements between TV2 and Canal Digital has been to restrict competition and that TV2’s object, in entering into an exclusive agreement with Canal Digital has been to further strengthen its position vis-à-vis TV3, TV2’s main competitor in the TV advertising market.¹⁶²

¹⁵⁹ See Case E-3/97 *Jan and Kristian Jæger AS* [1998] Efta Court Reports 1, at paragraph 19, and Case E-8/00 *Landsorganisasjonen i Norge* [2002] Efta Court Reports 114, at paragraph 39.

¹⁶⁰ Viasat’s complaint dated 30 July 2001, page 25 [179875].

¹⁶¹ *Idem*, page 26.

¹⁶² Letter from Viasat, dated 14 January 2004, page 5 [185531].

263. Viasat has also claimed that the agreements have had anti-competitive effects in the Norwegian DTH-market, where inter-brand competition is already limited due to the fact that there are only two suppliers of DTH services to consumers, Canal Digital and Viasat.¹⁶³ Viasat has emphasised the market power that both TV2 and Telenor/Canal Digital have, in Viasat's view, enjoyed in TV distribution and other, closely related, markets in Norway.
264. Viasat has claimed that TV2 is a “must have” channel for Norwegian distributors, that Viasat is denied access to TV2 due to the exclusive agreement and that this seriously harms the competitive situation of Viasat. Viasat has also raised arguments related to the duration of the exclusivity. It alleged that, in practice, the combined duration of the 1998 Agreement and the 2003 Agreement amounted to a *de facto* seven-and-a-half years of exclusive distribution of TV2 by Canal Digital, contrary to the case-law of Court of First Instance in *TPS*¹⁶⁴ and the Commission's practice in *Telenor/Canal+/Canal Digital*¹⁶⁵ and *Newscorp/Telepiú*.¹⁶⁶
265. Viasat has further argued that the conditions for individual exemption under Article 53(3) EEA are not met.¹⁶⁷

16.3 Agreements between undertakings

266. TV2 and Canal Digital are both undertakings within the meaning of Article 53(1) EEA insofar as both companies are entities engaged in economic activity,¹⁶⁸ in particular the wholesale supply of a Norwegian general interest TV channel by TV2 and the provision of retail distribution services on the DTH satellite platform to TV viewers by Canal Digital.
267. The agreements concluded between TV2 and Canal Digital regarding the distribution of TV2 on the DTH satellite platform of Canal Digital constitute agreements within the meaning of Article 53(1) EEA.

16.4 Restriction of competition by object

268. The agreements at issue have been concluded between a supplier of broadcasting content and a retail distributor of DTH satellite services. The two undertakings operate, for the purpose of the agreements, at different levels of the distribution chain. The agreements have provided Canal Digital with the exclusive right to distribute TV2 on the DTH satellite platform. These agreements therefore amount to a form of limited distribution.¹⁶⁹

¹⁶³ *Idem*, page 6.

¹⁶⁴ T-112/99 *Métropole Télévision (M6) and others v Commission (TPS)*, cited above.

¹⁶⁵ Commission decision of 29 December 2003 in Case No COMP/C.2/-38.287.

¹⁶⁶ Commission decision of 2 April 2003 in Case No COMP/M.2876.

¹⁶⁷ *Idem*, pages 10 et seq.

¹⁶⁸ Case C-41/90 *Hofner & Elsnher v Macrotron GmbH* [1991] ECR I-1979, paragraph 21.

¹⁶⁹ EFTA Surveillance Authority Guidelines on vertical restraints (OJ C 122, 23.5.2002, p. 1 and EEA Supplement to the OJ No 26, 23.5.2002, p. 7), paragraph 109.

269. It follows from settled case law,¹⁷⁰ and it is stated in the Authority's Guidelines on vertical restraints,¹⁷¹ that in assessing the applicability of Article 53(1) EEA to a vertical agreement, account should be taken of the actual conditions in which that agreement functions, in particular the economic and legal context in which the undertakings operate, the products or services covered by the agreement and the actual structure of the market concerned, as well as factors such as duration and conditions of the agreement.
270. However, for the purposes of applying Article 53(1) EEA, there is no need to take account of the actual effects of an agreement once it appears that its object is to restrict, prevent or distort competition.¹⁷² This is the case for agreements containing obvious restrictions of competition such as price-fixing, market-sharing or the control of outlets.¹⁷³ In distribution agreements the fixing of minimum retail prices or the imposition of export bans are examples of agreements which restrict competition by object.¹⁷⁴
271. As explained above, the 1998 Agreement between Canal Digital and TV2 was concluded in the context of the principal transaction for the acquisition of Norgeskanalen by Canal Digital with a view to ensure continued DTH satellite distribution of TV2. The 2003 Agreement and the 2005 Agreement were the result of competitive tenders/negotiations, where TV2 sought to obtain the best market price for the distribution of its channel(s) on the DTH satellite platform. This cannot be viewed as entering into agreements with the object of restricting competition.
272. There is nothing in the agreements concluded between TV2 and Canal Digital regarding the distribution of TV2 on the DTH satellite platform which suggests that those agreements have been concluded with the object of restricting competition. Neither has the Authority's investigation revealed any evidence which would suggest that there has been an anti-competitive object within the meaning of Article 53 EEA behind those agreements.
273. The parties to the agreements may have had the subjective intention of improving their competitive position on the markets in which they operate when the agreements were concluded. However, this is a normal part of any competitive process and cannot be regarded as prohibited *per se*.
274. Therefore, on the basis of the information available to the Authority, it cannot be concluded that TV2 and Canal Digital have entered into exclusivity arrangements with the object of restricting competition within the meaning Article 53(1) EEA.

16.5 Restriction of competition by effect

¹⁷⁰ Case T-112/99 *Métropole Télévision (M6) and others v Commission (TPS)*, cited above, paragraph 76; Joined cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services and Others v Commission* [1998] ECR II-3141, paragraph 136; Case C-399/93 *HG Oude Luttikhuis and Others v Verenigde Coöperatieve Melkindustrie Coberco* [1995] ECR I-4515, paragraph 10; *VGB and Others v Commission* [1997] ECR II-759, paragraph 140; and Case C-234/89 *Delimitis* [1991] ECR I-935, paragraph 31.

¹⁷¹ The Authority's Guidelines on vertical restraints, paragraph 7.

¹⁷² See e.g. Case-407/04 P *Dalmine Spa vs. Commission*, not yet reported, paragraph 84;

¹⁷³ Joined cases T-374/94, T-375/94, T-384/94 and T-388/94 *European Night Services and Others v Commission*, cited above, paragraph 136.

¹⁷⁴ The Authority's Guidelines on vertical restraints, paragraph 7 referring to Article 4 of the Vertical Block Exemption.

16.5.1 Introductory remarks

275. It follows from the above that it must be assessed whether the exclusive distribution agreements between TV2 and Canal Digital have had anti-competitive effects.
276. The exclusive distribution agreements concluded between TV2 and Canal Digital at the wholesale level have restricted competition within the meaning of Article 53(1) EEA if they have resulted in appreciable anti-competitive effects on the relevant retail market. Possible negative effects on competition would have to result from the fact that for the duration of the agreements only Canal Digital, and not Viasat, has been able to offer its subscribers access to TV2 via satellite. The Authority has therefore assessed, on the basis of the evidence available to it at this stage, to what extent Viasat has been foreclosed from the relevant retail market for TV distribution on the DTH satellite platform by the agreements in question.
277. The exclusivity provided for in the 1998 Agreement was lifted in 2003 in response to the concerns raised by the Authority in the context of the present case. Therefore the Authority has only assessed whether the 2003 Agreement which replaced that original agreement, and the 2005 Agreement which in turn succeeded the 2003 Agreement, have had restrictive effects within the meaning of Article 53(1) EEA.

16.5.2 The competition for the distribution rights to TV2

278. Following the Authority's intervention in 2003, the duration of the exclusivity has been reduced to two years. TV2 has invited Viasat to participate in negotiations/tenders regarding the distribution of TV2 in both 2003 and 2005.
279. Viasat has argued that a tendering process needs to be fair, reasonable, transparent and conducted in a non-discriminatory manner and has maintained that, with respect to the bidding for the rights to distribute TV2, this has not been the case.¹⁷⁵
280. Viasat has pointed out that Canal Digital had a far stronger market position than Viasat; with [xxx] of all Norwegian DTH customers, Canal Digital would have had about twice as many DTH subscribers as Viasat and that, as a result, [**business secrets**].¹⁷⁶
281. Viasat alleges that in 2005 the joint acquisition by Canal Digital/TV2 of the rights to broadcast Norwegian football placed Viasat's offer for the distribution rights to TV2 at a competitive disadvantage and led TV2 to choose Canal Digital as the exclusive distributor of TV2 in the DTH satellite market. In this respect Viasat has noted that Telenor, at the time, also had an indirect ownership in TV2 through its 44% ownership interest in A-pressen, the latter again owning about 1/3 of TV2. In Viasat's view, Telenor's indirect ownership stake in TV2 (see paragraph 9 above) increased the strategic, commercial incentive to choose Canal Digital as the sole distributor for TV2. By doing so, both Canal Digital and TV2 would be secured

¹⁷⁵ Letter from Viasat, dated 29 June 2006, page 8 [380036].

¹⁷⁶ Letter from Viasat, dated 29 June 2006, page 8 [380036].

favourable commercial positions and Viasat would be foreclosed from the DTH satellite distribution market.¹⁷⁷

282. Viasat therefore submits that the tendering process was not real but merely functioned as “window dressing”.¹⁷⁸
283. However, the investigation by the Authority of both the negotiations in 2003 and the tender procedure and the related tender conditions in 2005 has not uncovered any evidence which suggests that at either of these points in time the competition for the rights to distribute TV2 was not real. As far as the Authority has been able to ascertain, Canal Digital was not given any preferential treatment when bidding for the rights to distribute TV2. It is true that Viasat was not invited by TV2 to make a bid for exclusive distribution in 2003. On the other hand, Viasat never requested to be given the opportunity to make such a bid, and indeed refused to do so in 2005. Based on the available evidence the Authority must therefore take the view that, following the Authority’s intervention in 2003, TV2 gave both parties an opportunity to bid for the distribution rights to the TV2 channel.
284. The Authority has examined the bids which were made by Canal Digital and Viasat in 2003 and 2005 and information obtained from TV2 on how it assessed these bids. Canal Digital’s bid for exclusive distribution was significantly higher than the sum of the two bids of Canal Digital and Viasat for non-exclusive distribution both in 2003 and in 2005.
285. In other words, each time there has been competition for the rights to distribute TV2, TV2 has chosen between offers made by both Canal Digital and Viasat. TV2 has, on each occasion, been free to choose which DTH satellite operator(s) to conclude distribution agreements with. It has chosen the highest bid and the duration of the agreement on each occasion has been genuinely limited to 2-years.
286. It therefore appears that the reason why Viasat has not been awarded any rights to distribute TV2 is that it has never made a sufficiently high bid, not that the competition has not been real. In this connection it is in particular noted that Viasat has not been willing to submit an offer for the exclusive distribution of TV2 even if it was explicitly requested to do so by TV2 in 2005.
287. In this respect it is useful to note that the financial strength of Canal Digital and Viasat would appear to be comparable. They both operate on a Nordic level and benefit from comparable economies of scale and scope. They are both active as purchasers on several wholesale markets and seem generally able to acquire the necessary content for their platforms. There is therefore no evidence to suggest that a lack of financial resources has prevented Viasat from making a sufficiently high bid to be granted exclusive distribution rights to TV2.
288. It is true that the higher number of subscribers to Canal Digital as compared to Viasat in Norway may have given Canal Digital a certain advantage over Viasat when competing for the exclusive rights to distribute TV2. TV2 would at the outset reach out to fewer viewers if the channel was distributed exclusively on Viasat’s platform thereby potentially reducing the viewer shares of TV2 and consequently its income from advertisers.

¹⁷⁷ Letter from Viasat, dated 29 June 2006, page 9 [380036].

¹⁷⁸ Letter from Viasat, dated 29 June 2006, page 9 [380036].

289. However, DTH satellite distribution has a limited impact on the viewer shares of TV2 because it is available on other TV distribution platforms. Moreover, if TV2 is as important for TV retail distribution as Viasat maintains, the exclusive distribution of TV2 on its platform could be expected to increase the subscriber base of Viasat thereby preserving TV2's advertising income.
290. On the other hand, withdrawing from Canal Digital's platform would represent a cost for TV2 such that Viasat's bid for exclusive distribution would have to be high enough to make it worthwhile for TV2 to switch platform.
291. However, even when requested by TV2 to do so, Viasat did not make a bid for the exclusive distribution rights to TV2. It is therefore impossible to know how much higher than Canal Digital's bid for exclusive distribution Viasat's exclusive bid would have had to be for it to have been awarded the rights to distribute TV2 exclusively. Viasat has not demonstrated that it could not have won a competition for the exclusive distribution rights to TV2. The Authority therefore finds that there is insufficient evidence to prove that Viasat has not been in a position to win a bidding round for exclusive distribution.
292. Finally, as regards the arguments of Viasat relating to the joint acquisition in 2005 of the rights to broadcast Norwegian football by Canal Digital and TV2 (paragraph 281 above), it must be noted that those rights have been commercialised by the joint venture TV2 Zebra and its subsidiary TV2 Sport. The TV2 channel has therefore not been the main vehicle for the commercialisation of those rights. The fact that some of the football matches must be broadcast on TV2 according to the requirements of the Norwegian Football Federation¹⁷⁹ may have increased the value of TV2 for DTH satellite operators. However, this was an element which both Canal Digital and Viasat could take into account when bidding for the rights to distribute TV2 in 2005.
293. There is no evidence available to the Authority which suggests a link between the acquisition of the football rights in June 2005 and the granting of the rights to distribute TV2 to Canal Digital in October 2005. Nor does the available evidence support a finding that the joint acquisition of the football rights by Canal Digital and TV2 would have prevented Viasat from acquiring the rights to distribute TV2 on an exclusive basis.
294. On the basis of the above considerations the Authority takes the view that it does not have sufficient evidence in its possession to demonstrate that it has been practically or commercially unfeasible for Viasat to be awarded distribution rights to TV2 at the end of each 2-year period during which exclusivity has applied.

16.5.3 Assessment of the market developments since 2002 with TV2 exclusively on Canal Digital's platform

295. In order to assess the effect of the exclusivity required by the 2003 Agreement and 2005 Agreement the Authority has examined the developments in the market for the provision of pay-TV services on DTH satellite platforms since 2002.

¹⁷⁹ The tender invitation of the Football Federation required that certain matches should be shown on analogue terrestrial TV, i.e. on either NRK, TV2 or possibly TVN.

296. The market shares of Viasat for 2002 to 2004 calculated on the basis of Viasat's own 2005 estimates of the average number of digital subscribers per year (table 4 in section 9.2 above), **[business secrets]** from 2002 to 2004 (**[XXX]**).
297. The Authority has also made a number of calculations based on market data collected from the parties (see section 9.2 and 9.3 above). These calculations show that Viasat's customer base **[business secrets]** (table 5 in section 9.2 above and table 6 in section 9.3 above). In particular, **[business secrets]** (table 11).
298. Thus, during the period in which the 2003 Agreement and the 2005 Agreement have applied there has not been a significant negative trend in the number of digital subscriptions to services on the Viasat platform. Viasat **[business secrets]** (table 7 in section 9.3 above).
299. The Authority has also calculated the market shares of Canal Digital and Viasat based on the number of digital subscriptions on the two platforms and on turnover (tables 6 and 7 in section 9.3 above). While these calculations are confidential, they show that the share of Viasat subscriptions as a percentage of all subscriptions has been between [25-40%] from end 2002 to end 2006. Canal Digital has had a market share of between [60-75%] during this period. Calculations based on turnover figures show a similar distribution of market shares. While it does appear to be the case that most of the growth in the market during the period under examination has accrued to Canal Digital thereby increasing the market share of that operator, the Authority's calculations do not show a clear negative trend in the market shares of Viasat.
300. The above calculations do not suggest that there is a risk that Viasat is being eliminated from the market because it does not have access to TV2. On the contrary, based on the available evidence, it appears to the Authority that Viasat has been able to maintain its position in the market for the 2-year period during which the exclusivity has applied. It therefore does not seem that the exclusivity under the 2003 Agreement or the 2005 Agreement has weakened the market position of Viasat to such an extent that it has not been in a position to compete effectively with Canal Digital for the distribution rights to TV2 after each period of exclusivity.
301. From the assessment in sections 16.5.2 and 16.5.3 it thus appears that there is insufficient evidence to establish that the 2-year exclusivity agreements concluded between TV2 and Canal Digital in 2003 and 2005 respectively have had appreciable foreclosure effects in the relevant market for the provision of pay-TV services on DTH satellite platforms.

16.5.4 Other factors than the exclusive agreements between TV2 and Canal Digital which might have had a negative impact on Viasat's customer base

302. In addition to the above it appears from the Authority's investigation that factors other than the exclusive agreements between TV2 and Canal Digital might have had a negative impact on Viasat's customer base.
303. Table 1 in section 9.2 above, shows that Canal Digital was a small DTH satellite operator before it acquired Norgeskanalen in 1998. As a result of that acquisition the

size of the customer base of Canal Digital became equal to that of Viasat. Moreover, according to the figures in table 1 there was no sign of any anti-competitive effect at the end of September 2000 resulting from the exclusivity in the 1998 Agreement as Canal Digital and Viasat still had a comparable number of subscribers.

304. On the other hand, **[business secrets**

], there are a number of factors which might have had a negative impact on Viasat's customer base and which are not related to the fact that Canal Digital distributed TV2 exclusively on its DTH satellite platform.

305. The **first factor** regards the issue of interoperability. It is the Authority's understanding that during analogue distribution satellite decoders were generally interoperable. Thus customers of Canal Digital could receive services from Viasat on a decoder that had been provided by Canal Digital and *vice versa*.

306. Through the NorDig co-operation a Nordic standard technical specification for digital decoders, based on a so-called open interface, to ensure interoperability across the Nordic area, was agreed in March 2001. Canal Digital has maintained throughout the procedure in the present case that it has supported interoperability.

307. Canal Digital has submitted information which indicates that Viasat did not support interoperability when it started its digitalisation process in 2000 (see section 11 above).

308. When Viasat started digital distribution in 2000¹⁸⁰ it offered existing customers the chance to swap the analogue decoder for a digital decoder, in return for a commitment to subscribe to Viasat's Gold package for a specific time period (24 months). These decoders had only one card slot and services from Canal Digital could therefore not be received on the same decoder. According to Canal Digital, Viasat sent out 130 000 such decoders on the market from January 2001. From March 2001 this was contrary to the principles which had been agreed by the NorDig co-operation in which Viasat participated.

309. In addition, while some Canal Digital subscribers have been able to acquire CA-modules and to access Viasat's services on a Canal Digital decoder, it appears that Viasat has not actively used this as an opportunity to reach out to more subscribers but has preferred a distribution strategy which is relatively hostile to interoperability.

310. In 2000 Viasat considered that approximately **[XXX]** of all customers subscribed to services from both Canal Digital and Viasat (see section 9.2 above). Viasat considered that at the end of 2004 there were **[XXX]** DTH households in total and **[XXX]** households (**[XXX]**) which subscribed to the services of both Canal Digital and Viasat.¹⁸¹ Thus it appears from Viasat's own figures **[business secrets**

¹⁸⁰ See paragraph 117 above.

¹⁸¹ In April 2007 Viasat considered that **[XXX]** of its subscribers (**[XXX]**) were also Canal Digital subscribers, i.e. **[XXX]** of its subscribers were not (see section 9 above). It considered that Canal Digital has more than 450 000 subscribers. From these figures it would thus appear that there were at least **[XXX]** (**[XXX]**)

] There is nothing to suggest that the apparent reduction from 2000 to 2004 in the share of households which have subscribed to services from both Canal Digital and Viasat is connected to the fact that Canal Digital has distributed TV2 on an exclusive basis.

311. Rather, it appears likely that an important reason for this development is Viasat's lack of support for interoperability. In particular at the beginning of digitalisation when consumers were unfamiliar with digital TV and decoders were still quite expensive many households may have been reluctant to buy two decoders and opted for a Canal Digital decoder instead of a decoder from Viasat since Canal Digital appeared more committed to interoperability. By supplying interoperable decoders to the market Viasat would have offered its subscribers the possibility to subscribe to Canal Digital's services on the same decoder and thereby get access to TV2. This would have increased the attractiveness of acquiring a Viasat decoder and could have increased the number of subscribers on Viasat's platform. Viasat might also have been able to increase the number of subscribers to its services by more actively facilitating the use of CA-modules on Canal Digital decoders.
312. Far from reacting to this problem, in 2004 Viasat implemented a proprietary decoder solution thereby removing all possibilities for interoperability from the market; a Viasat decoder was needed in order to receive Viasat services. As mentioned above in section 11, information from the Norwegian Consumer Council and the press indicates that the introduction of the new decoder standard created significant problems for a number of Viasat customers.
313. Viasat has provided very little information on how it implemented the new decoder standard and how this affected its subscribers. **[business secrets]**

] . It is possible that at least part of this decrease is related to the introduction of the new decoder standard. In any event nothing suggests that this decrease was caused by the exclusivity in the 2005 Agreement.

314. The **second factor** relates to Viasat's piracy problem. It is evident that Viasat experienced a serious piracy problem. A decision from the Danish Competition Authority of 8 August 2002 concerning the conditions for the distribution of smart cards and the selection of decoder producers is illustrative in this regard.¹⁸² According to this decision, Viasat considered that around **[XXX]** of all smart cards were piracy copies and that the extent of illegal piracy constituted a serious problem.¹⁸³ The Authority does not have reason to believe that Viasat's piracy problems in Norway were less serious. Indeed Viasat has itself admitted that as a result of piracy the number of Viasat subscribers was not increasing while the programming was still viewed by pirates and that this had a financial impact on right

+ **[XXX]**) DTH households in Norway and that **[XXX]** of those households are subscribers on both platforms. This would mean that around **[XXX]** of all DTH households were subscribing to services of both providers spring 2007.

¹⁸² Afgjørelse vedr. Viasat's vilkår for udlevering af parabolkort og udvælgelse af godkendte dekoderproducenter, Konkurransestyrelsen, 8 August 2002 [179880].

¹⁸³ Paragraph 17 of the decision. See also reply from Viasat dated 11 April 2005, page 7-8, according to which Viasat has had estimates of pirate viewers varying from **[XXX]** to **[XXX]** [316847]; according to Kampanje, Viasat has estimated that 80.000 Norwegians have received Viasat signals on a piracy card resulting in a loss of 240 million NOK [426516].

holders, paying subscribers and Viasat itself (see paragraph 155 above). A good number of Viasat subscribers might therefore have replaced their original smart card upon expiry with a pirate card. Moreover, potential new customers might have acquired a pirate card rather than becoming Viasat subscribers. Consequently, it cannot be ruled out that a good part of the apparent decrease in customers Viasat experienced was a result of its piracy problem.

315. The **third factor** [business secrets

].¹⁸⁴ [business secrets

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316. **Fourthly**, Viasat has submitted that it had approximately [XXX] analogue customers in Norway in March 2003 and that during the period from March 2003 to August 2004 it [XXX] of these customers (see paragraph 132 above). It appears from Viasat's submission in 2002 that from January 2002 the only analogue service offered was the distribution of TV3 (see paragraph 133 above). Thus, when Viasat shut down analogue distribution of TV3 its subscribers had to decide whether to subscribe to Viasat's more extensive digital packages or stop subscribing to Viasat's services.

317. These customers had never received TV2 from Viasat's platform. As a matter of fact many of these customers may have subscribed to the services of both Canal Digital and Viasat during analogue distribution. As Canal Digital finalised its digitalisation process already in 2002 many of these analogue customers had possibly already acquired a digital decoder from Canal Digital.¹⁸⁵

318. It is not known to the Authority what kind of offer Viasat made to its [XXX] analogue customers to induce them to migrate to Viasat's digital platform. However, Viasat has not submitted any information indicating that it made special offers to those customers who did not want to subscribe to the premium Gold package. It cannot therefore be ruled out that the reason why Viasat lost these customers was related to the costs of the digital non-premium services of Viasat and the cost of migrating from its analogue to its digital platform rather than the fact that TV2 was not available on Viasat's platform.

319. In addition to the above factors, Canal Digital claims that it has been more successful than Viasat for many reasons, most of which are not related to the exclusive right to distribute TV2. Amongst others it maintains that it has been more

¹⁸⁴ See Reply from Viasat, dated 5 November 2002, page 18, according to which Viasat had [XXX] registered analogue customers and possibly around [XXX] Viasat analogue customers had already moved to digital DTH-distribution in practice although their analogue subscriptions had not yet expired [101300]; See also letter from Viasat, dated 29 January 2003, page 3 according to which a proper comparison of Viasat's and Canal Digital's market shares should be exclusive the analogue subscribers [99262].

¹⁸⁵ According to the letter from Viasat, dated 29 January 2003, page 3, the large majority of its analogue subscribers ([XXX]) had already acquired a digital set-top box [99262].

successful with respect to marketing and acquisition of attractive content. According to Canal Digital, Viasat also lost goodwill with dealers due to its proprietary strategy with regard to decoders.¹⁸⁶

320. It thus appears that there are a number of factors which might have had a negative impact on Viasat's customer base both prior to the Authority's intervention in 2003 and thereafter and which are not linked to the exclusive agreements between TV2 and Canal Digital.

16.5.5 The possibility that the exclusivity has led to foreclosure effects in the market segment which only buys non-premium pay-TV

321. It appears from the Authority's investigation that the position of Viasat in the segment of the relevant market which only buys non-premium services¹⁸⁷ is considerably weaker than its position in the segment of the market which buys premium pay-TV on top of non-premium pay-TV.¹⁸⁸ The Authority has therefore assessed in more detail whether the exclusivity has led to foreclosure effects in this segment of the relevant market.

322. From the end of 2003 to the end of 2006 Viasat's number of Gold subscribers [XXX] by more than [business secrets]. As a matter of fact Viasat appears to have a strong competitive position as far as subscribers in the segment of the market which buys premium pay-TV on top of non-premium pay-TV is concerned. In this market segment the position of the two platforms is comparable [business secrets]. There is therefore no sign of any foreclosure effect resulting from the exclusive agreements between TV2 and Canal Digital in this market segment.

323. When looking at the number of subscribers who only buy non-premium services, Viasat appears to have a significantly weaker competitive position than Canal Digital. In this market segment Canal Digital has a substantially higher number of subscribers than Viasat.¹⁸⁹ From the end of 2003 to the end of 2006 the number of subscribers to the Start and Silver packages of Viasat [XXX] by more than [XXX] ([XXX]).¹⁹⁰

324. However, it cannot be concluded on the basis of the available information that the reason for the weaker position of Viasat is the exclusive agreements between TV2 and Canal Digital. This is partly because it is not possible to isolate the effect of the exclusivity from other factors, including those identified above, that may have had an impact on the position of Viasat in this market segment.

325. In this respect it would, in the view of the Authority, at least need to be demonstrated that Viasat could not have improved its position in this market segment by using as much resources on marketing and promotion as Canal Digital in order to

¹⁸⁶ Reply from Canal Digital, dated 14 March 2005, page 25 [313519]; Letter from Canal Digital, dated 23 August 2006, page 2 [385302].

¹⁸⁷ The term "non-premium" is used to refer to pay-TV packages/services which do not contain premium pay-TV channels.

¹⁸⁸ The term "premium pay-TV services" is used to refer to pay-TV packages which contain premium pay-TV channels. During the relevant period such channels have been marketed only on top of non-premium pay-TV services and not on a stand-alone basis.

¹⁸⁹ The exact number is confidential to Viasat.

¹⁹⁰ The Authority is not in possession of the information necessary to assess whether these customers left the Viasat platform altogether or "up-graded" to the Gold package.

target subscribers in this market segment, e.g. by subsidising decoders (or CA-modules) to them.¹⁹¹

326. Viasat appears to have concentrated its marketing efforts on the Gold package by subsidising decoders to customers who have subscribed to this package. Viasat has not explained convincingly why it has not been able to improve its position in a similar manner in the segment of the market which only buys non-premium pay-TV services.

327. The extent to which it would have been commercially possible for Viasat to increase its sales of non-premium packages, for example by subsidising decoders for subscribers to the Start and Silver packages, would depend on the scale of the investments that would be necessary, the length of time it would take to recoup these investments and the time that new customers on average remain subscribers to Viasat's services.¹⁹² Viasat has not presented any calculations to the Authority which could support a finding that it has been commercially unfeasible for Viasat to improve its position in the market segment which only buys non-premium services.

328. Viasat has submitted analysis from Data Intelligence regarding the effects of the exclusivity of TV2 on the Norwegian DTH pay-TV market.¹⁹³ This analysis seems to conclude that **[business secrets**

]. Furthermore,

it is estimated by Data Intelligence that **[business secrets**

].

329. Data Intelligence has also estimated what the **[business secrets**

].

330. However, if **[business secrets**

] this does not show that the exclusivity leads to appreciable foreclosure effects. In this regard it must be taken into account that the total market consists of more than **[XXX]** DTH households according to Viasat's own estimates.¹⁹⁴ A substantially higher number of subscribers would have to be locked into Canal Digital's platform as a result of the exclusivity before an appreciable foreclosure effect could be established.

16.5.6 The impact of the free-to-air distribution of TV2

331. The fact that TV2 has been available free-to-air during the whole period reduces the likelihood that the exclusivity has led to foreclosure effects.

¹⁹¹ If Canal Digital has subsidised decoders to subscribers to its Family package on a large scale while Viasat has not subsidised decoders to new subscribers to its Silver package, this could be part of the explanation for the very limited number of subscribers to Viasat's Silver package.

¹⁹² The marginal cost of serving an additional customer when he has entered the platform is very low as most costs related to the operation of a pay-TV platform are fixed.

¹⁹³ Analysing the effect of exclusivity of TV2 on the Norwegian DTH Pay-TV market, Data Intelligence November 2005 [349923].

¹⁹⁴ See paragraph 312 above.

332. Viasat has argued that:

“The typical household has the option of receiving TV2 via terrestrial transmission. However, this will cause inconvenience and, for some households, additional costs. The household need to use two remote controls, in order to switch between channels received via DTH and channels received via terrestrial transmission. Interactive services offered by Viasat will not be available for TV2 and pre-set recording may be more difficult. The household will have to keep the antenna for terrestrial transmissions; this would otherwise be unnecessary. If a new antenna is needed, or for customers considering switching from Canal Digital to Viasat, this means that the customer must incur the cost of purchasing a new antenna. In some areas the terrestrial transmission of TV2 will have lower quality than the DTH transmission.”¹⁹⁵

333. However, none of these arguments amounts to evidence which demonstrates that Viasat could not have taken advantage of the fact that TV2 has been available free of charge in the analogue terrestrial network.

334. The free-to-air distribution of TV2 means that it has been technically possible for viewers to subscribe to the packages of Viasat and receive TV2 via analogue terrestrial distribution. As shown in Table 13 in section 12 above, 87,7% of Norwegian TV viewers have good quality reception of TV2 on the terrestrial network, free of charge. The only cost they have to incur in order to receive TV2 on the terrestrial network is the one-off cost of purchasing an appropriate antenna. Many households will have had such an antenna from the outset. The Authority therefore takes the view that 87,7% of Norwegian TV viewers have been in a position to use terrestrial reception of TV2 as a supplement to the packages offered by Viasat.

335. In order to improve its market position in the segment which only buys non-premium pay-TV, it would at the outset appear possible for Viasat to have provided equipment such as decoders, satellite dishes but also terrestrial antennas to consumers so as to ensure that consumers could receive non-premium services from Viasat’s platform and use the terrestrial reception of TV2 (and TVN) as a supplement to the non-premium packages of Viasat. Indeed, it would appear that Viasat has taken advantage of the fact that TV2 has been available free-to-air on the analogue terrestrial network as regards customers who subscribe to the Gold package.¹⁹⁶

336. As noted at paragraph 327 above, the extent to which it would have been commercially possible for Viasat to increase its sales of non-premium packages to these households by working around the exclusivity would depend on the scale of the investments that would be necessary (subsidisation of decoders and additional equipment to receive TV2), the length of time it would take to recoup these investments and the time these customers would on average remain subscribers to Viasat’s services. However, Viasat has not submitted any evidence showing that it has been commercially unfeasible to increase its sales of non-premium packages to these households by working around the exclusivity in this manner.

¹⁹⁵ Opinion by Mats Bergman, Annex 1 to letter from Viasat dated 14 January 2004 [185531].

¹⁹⁶ According to Canal Digital in 2005, Viasat had the last two years run campaigns which included an antenna for terrestrial reception of TV2 and TVN. Canal Digital has submitted copies of advertisements showing that Viasat has subsidised new subscribers to its Gold package with equipment necessary to receive services from Viasat’s platform and an antenna making it possible to receive TV2 and TVN from the analogue terrestrial network, Reply from Canal Digital, dated 14 March 2005, page 11 and annex 4 [313519].

337. Around 6% of Norwegian TV viewers have a reduced quality reception of TV2 but are still able to receive the channel. However, the information available to the Authority suggests that they could improve the quality of reception by investing in a larger antenna and/or an antenna amplifier without incurring exorbitant costs (see section 12 above). The Authority considers that an investment in the range of NOK 800 to NOK 1 500 would have improved the quality of reception sufficiently to enable the majority of these viewers to use terrestrial reception of TV2 as a supplement to the packages offered by Viasat. Therefore, the same conclusion must be drawn in relation to this customer group; Viasat has not demonstrated that it has been commercially unfeasible to work around or at least mitigate the effects of the exclusivity.
338. With regard to the households which are located in TV2's terrestrial shadow zone but which can receive satellite TV, the Authority concludes that it has not been possible to increase sales of non-premium packages by working around the exclusivity. This customer group is composed of around 97 000 households (see section 12 above). It has not been possible to ascertain how many of these households are in fact DTH satellite customers.
339. Furthermore, the Authority highlights that Viasat has not been prevented *de jure* from selling its services to any Norwegian households since customers have not been contractually obliged only to buy from Canal Digital. Unlike the situation where buyers are bound by an exclusive purchasing obligation, buyers in the present case have been free to buy TV distribution services from whichever operator they want.
340. As regards households which have had a good quality reception of TV2 from the analogue terrestrial network and assuming that TV2 is of such an essential nature as Viasat claims, the Authority takes the view that it cannot be established on the basis of the existing evidence that Viasat has been unable to present itself as an alternative provider of pay-TV services on the DTH satellite platform because TV2 has been exclusively on Canal Digital platform.
341. In the Authority's view it is only in the areas with reduced reception quality or no reception of TV2 on the analogue terrestrial network that a possible *de facto* foreclosure effect could have occurred. Moreover, it is only to the extent that households have been unwilling to buy services from more than one platform or forego TV2 that the exclusivity could have led to a *de facto* foreclosure effect.
342. While Canal Digital has been able to include TV2, TVN and TV2 Zebra in its packages it has not been able to include TV3, SportN and all the other channels controlled by Viasat. Viasat has, in particular through TV3's distribution rights to the Champions League, had premium sports content on its platform. Some of the viewers in the areas of Norway where the reception quality of TV2 on the analogue terrestrial network has not been good have probably been interested in subscribing to Viasat's non-premium services because they want to have access to TV3, SportN or other Viasat channels, e.g. to be able to follow the Champions League or other sports events which are not offered on Canal Digital's platform. This is so even if they have to subscribe to Canal Digital's services in addition to see TV2.
343. As a matter of fact it is entirely possible to subscribe to a non-premium Viasat package on top of a non-premium (or premium) Canal Digital package. This would provide the subscriber with a comprehensive offer of the most important TV channels

in Norway. In particular, if Viasat had been prepared to subsidise decoders (or CA-modules) to this customer group, it is quite possible that many customers would have been interested in subscribing to Viasat's services in addition to the services of Canal Digital.

16.5.7 Conclusion

344. On the basis of the above assessment the Authority takes the preliminary view that it cannot be established on the basis of the existing evidence that the 2003 Agreement and the 2005 Agreement have appreciably restricted competition within the meaning of Article 53(1) EEA.

16.6 Effect on trade

345. In light of the conclusions above it is not necessary to assess whether the exclusive agreements at issue may appreciably have affected trade within the meaning of Article 53(1) EEA.

16.7 Conclusion on the assessment under Article 53 of the EEA Agreement

346. Based on the assessment of the information available to it at this stage the Authority has taken the preliminary view that there is insufficient evidence to conclude that the agreements between TV2 and Canal Digital concluded in 2003 and 2005 regarding the distribution of TV2 on the DTH satellite platform constituted infringements of Article 53 EEA.

17 ASSESSMENT UNDER ARTICLE 54 OF THE EEA AGREEMENT

17.1 Introduction

347. Article 54 EEA prohibits any abuse by one or more undertakings of a dominant position within the EEA territory or a substantial part of it insofar as it may affect trade between Contracting Parties to the EEA Agreement.
348. Article 54 EEA is identical in substance to Article 82 EC. By virtue of Article 6 EEA and Article 3(2) of the Surveillance and Court Agreement the case law of the Court of Justice of the European Communities is relevant for the interpretation of Article 54 EEA (see paragraph 259 above).
349. According to settled case law, **dominance** is a position of economic strength enjoyed by an undertaking which enables it to prevent effective competition being maintained on the relevant market by affording it the power to behave to an appreciable extent independently of its competitors, its customers and ultimately of the consumers.¹⁹⁷
350. Furthermore, although the importance of market shares may vary from one market to another, very large shares are in themselves, and save in exceptional circumstances, evidence of the existence of a dominant position.¹⁹⁸ The Court of Justice has held that this was so in the case of a 50% market share.¹⁹⁹
351. An undertaking which has a very large market share and holds it for some time, by means of the volume of production and the scale of the supply which it stands for without holders of much smaller market shares being able to meet rapidly the demand from those who would like to break away from the undertaking which has the largest market share is by virtue of that share in a position of strength which makes it an unavoidable trading partner and which, because of this alone, secures for it, at the very least during relatively long periods, that freedom of action which is the special feature of a dominant position.²⁰⁰
352. The **concept of abuse** is an objective concept relating to the behaviour of an undertaking in a dominant position, which is such as to influence the structure of a market where, as a result of the very presence of the undertaking in question, the degree of competition is weakened and which, through recourse to methods different from those which condition normal competition in products or services on the basis of the transactions of commercial operators, has the effect of hindering the maintenance

¹⁹⁷ See Case 27/76 *United Brands*, [1978] ECR 207, paragraph 65, and Case 85/76, *Hoffmann-La Roche*, [1979] ECR 461, paragraph 38.

¹⁹⁸ Case T-340/03 *France Télécom SA v Commission*, not yet reported, paragraph 100, Case 85/76 *Hoffmann-La Roche v Commission* [1979] ECR 461, paragraph 41; Case T-221/95 *Endemol v Commission* [1999] ECR II-1299, paragraph 134.

¹⁹⁹ T-340/03 *France Télécom SA v Commission*, not yet reported, paragraph 100; Case C-62/86 *AKZO v Commission* [1991] ECR I-3359, paragraph 60.

²⁰⁰ Case T-65/98 *Van den Bergh Foods Ltd v Commission*, [2003] ECR II-4653, paragraph 154; Case 85/76 *Hoffman-La Roche v Commission*, cited above, paragraph 41; and Case T-139/98 *AAMS v Commission* [2001] ECR II-3413, paragraph 51.

of the degree of competition still existing in the market or the growth of that competition.²⁰¹

353. In the present case, any potential dominant position would be on the Norwegian market. The Authority is therefore the competent authority to apply Article 54 EEA in the present case pursuant the first sentence of Article 56(2) EEA.

17.2 The alleged infringements of Article 54 EEA by Canal Digital/Telenor

17.2.1 The allegations of Viasat

354. Viasat alleges that the exclusive agreements amount to an abuse of a dominant position by Canal Digital/Telenor. It has submitted that Telenor is dominant both in the DTH market and in a number of horizontal and vertical neighbouring markets, and that the exclusivity agreements enhance Canal Digital/Telenor's dominant position in the DTH market as they may lead to foreclosure of Viasat, the only competitor.
355. Furthermore, Viasat alleges that the exclusivity agreement strengthen Canal Digital's position *vis-à-vis* Viasat towards new TV channels wanting to penetrate the Norwegian DTH market through either Canal Digital's or Viasat's DTH satellite distribution.

17.2.2 Dominance on the relevant retail market

356. As mentioned in section 9.3 above, the Authority has calculated the market shares of Canal Digital and Viasat in terms of the number of subscribers to digital packages and in terms of turnover. While these calculations are confidential, they show that the share of Viasat subscriptions as a percentage of all subscriptions has been between [25-40%] from end 2002 to end 2006. Canal Digital has had a market share of between [60-75%] during this period. Calculations based on turnover figures show a similar distribution of market shares. It would also appear that most of the growth in the market during the period under examination has accrued to Canal digital, thereby increasing its market share to some extent.
357. On the basis of the information available to the Authority it appears that during the period under examination, new entry has not represented a significant competitive threat capable of constraining the behaviour of the existing DTH satellite distributors.
358. Canal Digital has increased its prices twice during the period under examination; first with effect from 1 January 2004 and then again from 1 January 2006 (see section 14 above). These price increases could be an indication that Canal Digital has been able to behave independently of its competitors and customers.
359. However, as regards the price increases of the Local package in 2004, Canal Digital has pointed out that, even after the increase (from NOK 495 to NOK 895), Viasat's basic package had a higher price than its own comparable package; Viasat Start had an annual cost for the customer of NOK 1 427 (consisting of an annual fee of NOK 599 and 12 monthly fees of NOK 69) and included NRK1, NRK2, TV3, ZTV, Viasat Sport, Explorer and CNN, whereas Canal Digital's Local package had

²⁰¹ Case 85/76 *Hoffmann-La Roche v Commission*, cited above, at paragraph 91; Case C-62/86 *AKZO v Commission*, cited above, at paragraph 69; Case T-65/98 *Van den Bergh Foods v Commission*, [2003] ECR II-4653, paragraph 157.

an annual cost for the customer of NOK 895 and contained NRK1, NRK2, TV2 and TVNorge.²⁰²

360. As regards the price increases of the Local package in 2006, Viasat responded by increasing the price of its Start package by approximately 24% (from NOK 1 527 to NOK 1 887), although it also included three new channels in the package (SportN, ViasatHistory and Jetix). Secondly, while there was a difference in the relative level of the price increases (45% for Canal Digital and 24% for Viasat), Canal Digital's price increase of NOK 399 was from a much lower base (NOK 899) than Viasat's price increase of NOK 360 and the Viasat Start package remained more expensive than the Local package even after the price increase. Viasat also increased the price of the Silver package in 2006 by around 3,3% (the card fee increased from NOK 599 to NOK 699) as a response to Canal Digital's price increase on the Family package.
361. In addition, it should be recalled that subscribers would incur switching costs in the event that they decided to switch from Canal Digital to the Viasat platform, in particular the acquisition of the necessary technical equipment to receive the services of Viasat, the time that would have to be invested in switching and in arranging the terrestrial reception of TV2 as well as any technical problems that might have to be resolved. However, from the available evidence the Authority is not in a position to conclude that a more aggressive response from Viasat aimed at facilitating switching from the non-premium packages of Canal Digital to the non-premium packages of Viasat would have been unprofitable for Viasat. The threat of such a response might therefore have constrained the market power of Canal Digital.
362. On the packages other than the Local package, Canal Digital's price increases have been more moderate in relation to the annual cost of those packages.²⁰³ It appears likely that the aggressive marketing of Viasat's Gold package has constrained Canal Digital's pricing of its premium packages (Entertain and Canal+). Indeed, Viasat and Canal Digital have a comparable number of subscribers to packages which contain premium pay-TV channels.
363. Moreover, in October 2006 the price of the Family package of Canal Digital was only around NOK 1 000 cheaper per year than the Gold package of Viasat. If Canal Digital increased the price of the Family package further there is a risk that customers would start switching to Viasat's Gold package and receive TV2 either from the Local package or from the terrestrial network. It would therefore appear likely that the pricing of Viasat's Gold package and the offers made to new subscribers to this package have also constrained Canal Digital's pricing of its Family package. It would therefore appear that Viasat has represented a more efficient competitive constraint on Canal Digital's market behaviour with regard to packages other than the Local package than to the Local package itself.
364. Furthermore, Canal Digital has maintained that the main reason for the price increases is that it has had to pay more for the rights to distribute TV2 on its DTH satellite platform because these rights were acquired in competition with Viasat (see section 14 above). To the extent Canal Digital has enjoyed a degree of market power from having TV2 exclusively on its platform, that degree of market power would have been lost if Viasat had won the competition for the exclusive rights. Thus a large

²⁰² Reply from Canal Digital, dated 14 March 2005, page 14.

²⁰³ One would have to look at the value adjusted price increases, i.e. from the gross price increases one would have to deduct any added value resulting from new channels being added to the packages.

part of the price increases would appear to reflect the increased costs incurred by Canal Digital in order to keep TV2 on its platform.

365. Finally, the price increases appear to reflect, at least to some extent, improvements made to the quality of the product offered to consumers. Canal Digital has added a number of channels to its Family package during the period relevant to this case. TV2 Xtra was introduced in the Local package in 2004 and re-launched in 2005 as a fully-fledged channel with entertainment, film and sports content under the name TV2 Zebra.
366. For the above reasons the Authority is therefore not able to conclude at this stage of its investigation that the price increases of Canal Digital must be interpreted as a clear indication of dominance.
367. Canal Digital belongs to the Telenor Group. Telenor holds an indirect ownership in TV2 via its shares in A-pressen. Telenor has an ownership share in TV2 Zebra of 45%. Canal Digital Kabel, the largest cable network operator in Norway, is also owned by Telenor. Furthermore, Telenor controls 33% of the shares in NTV, which is about to roll out the new DTT network in Norway. Telenor is also the operator of the existing analogue terrestrial broadcasting network through its 100% owned subsidiary Norkring. Norkring has been assigned the task of establishing the DTT network on behalf of NTV. Telenor is also a provider of upstream satellite services.
368. Therefore, there are structural links between Canal Digital and other economic entities which are active in closely related markets. However, TV2 does not have any ownership interest in Canal Digital. There is no evidence which suggests that Telenor has a direct influence on the commercial decisions of TV2. Nor is there any evidence which indicates that TV2 has chosen Canal Digital as its DTH satellite distributor because Telenor holds an ownership share in A-pressen.
369. In addition, the fact that Canal Digital belongs to a group of companies which is active in neighbouring markets must be compared with the ownership structure of MTG, the group to which Viasat belongs. Viasat benefits in particular from being vertically integrated with the TV channels which are controlled by MTG and from the pay-TV activities of MTG in other countries.
370. Furthermore, as mentioned in paragraph 226 above, the Authority considers that Viasat must be regarded as a competitive constraint on Canal Digital as competition in pay-TV markets is geared towards the attractiveness of the content that can be offered to viewers. There is thus a constant competitive pressure from Viasat on Canal Digital and vice versa for the acquisition of attractive content. Canal Digital cannot therefore stop acquiring attractive content to its platform, maintain its prices and reap monopoly profits. Such a strategy would fail because subscribers would switch to Viasat if they regarded the content offered by Viasat as more attractive than the content offered by Canal Digital.
371. While there are signs that Canal Digital has enjoyed a certain degree of market power the Authority is of the opinion that it is not necessary to take a position on the question of dominance there being insufficient evidence to establish that any potential dominant position of Canal Digital has been abused.

17.2.3 Abuse

372. Canal Digital acquired the rights to distribute TV2 following a competition with Viasat in 2003 and 2005. It has offered TV2 on the retail market in packages with a number of other channels. It has not offered TV2 as an individual channel to its subscribers. The question is therefore whether the acquisition of the exclusive rights to distribute TV2 together with the inclusion of TV2 in its basic tier amounts to an abuse within the meaning of Article 54 EEA.
373. It is recalled that for there to be an abuse the conduct of the dominant company must have the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.²⁰⁴ While the effect referred to in case law is not necessarily an actual effect of the abusive conduct complained of, it must at least be established that the abusive conduct of the undertaking in a dominant position tends to restrict competition or, in other words, that the conduct is capable of having that effect.²⁰⁵
374. In section 16.5 above, the Authority has assessed in detail the possible anti-competitive effects of the exclusivity.
375. Having analysed the competition for the distribution rights to TV2 in 2003 and 2005 the Authority takes the view that Viasat has not submitted evidence which could convincingly show that it has been impossible for it to be awarded distribution rights to TV2 at the end of the 2-year period during which exclusivity has applied.
376. Having analysed the market developments during the time in which Canal Digital has had TV2 exclusively on its platform it appears to the Authority that Viasat has been able to maintain its position in the market for the 2-year period during which the exclusivity has applied. It therefore does not seem that the exclusivity under the 2003 Agreement and the 2005 Agreement has weakened the market position of Viasat to such an extent that it has not been in a position to compete effectively with Canal Digital for the distribution rights to TV2 after each period with exclusivity.
377. Moreover, the Authority has identified that there are a number of factors which might have had a negative impact on Viasat's customer base and which are not related to the fact that TV2 is distributed exclusively on Canal Digital's DTH satellite platform.
378. A more detailed assessment of possible foreclosure effects resulting from the exclusive agreements in the market segment which only buys non-premium pay-TV has failed to show that appreciable foreclosure effects result from the exclusivity. This is so in particular when taking into account the impact of the free-to-air distribution of TV2.
379. Having regard to all these considerations the Authority cannot conclude from the available evidence that the market behaviour of Canal Digital has resulted in an abuse of a dominant position within the meaning of Article 54 EEA.

²⁰⁴ Case 85/76 *Hoffmann-La Roche v Commission*, cited above, paragraph 91 ; Case *NV Nederlandsche Banden Industrie Michelin v Commission* (Michelin I) [1983] ECR 3461, paragraph 70 ; Case C-62/86 *AKZO Chemie BV v Commission*, cited above, paragraph 69; Case T-228/97, *Irish Sugar plc v Commission* [1999] ECR II-2969, paragraph 111.

²⁰⁵ Case T-203/01 *Manufacture française des pneumatiques Michelin v Commission* (Michelin II) [2003] ECR II-4071, paragraph 239; Case T-219/99 *British Airways v Commission* [2003] ECR II-5917, paragraph 250.

17.3 The alleged infringements of Article 54 EEA by TV2 on the relevant wholesale market

17.3.1 The allegations of Viasat

380. Viasat has alleged that TV2 “holds a gatekeeper position vis-à-vis DTH distributors”.²⁰⁶ According to Viasat TV2 is a “must have” channel for any Norwegian distributors of TV signals. Viasat also alleges that TV2 is a major driver for DTH satellite distribution.
381. Viasat claims that TV2 enjoys a dominant position in the relevant wholesale market and has alleged that by refusing to deal with Viasat TV2 has abused its dominant position. In Viasat’s view TV2 has refused to deal with it because of the fact that Viasat owns TV3, its major competitor on the TV advertising market.
382. Moreover Viasat has challenged the genuine character of the negotiations between Viasat and TV2 in 2003, and has claimed that those were not held in good faith. Viasat has also alleged that the tendering procedure in 2005 was not conducted in a fair, reasonable, transparent and non-discriminatory manner.²⁰⁷
383. Moreover, Viasat has claimed that TV2 as a dominant undertaking cannot enter into exclusive arrangements.

17.3.2 Dominance on the relevant wholesale market

384. It was concluded above that TV2 must be regarded as the only supplier in the relevant wholesale market; its market share has therefore been 100% for the entire period under examination.
385. The barriers to entry to this market are high amongst others due to the limited capacity on the analogue terrestrial platform which has limited the possibilities for competitors of TV2 to be distributed free-to-air. It has been difficult for actual or potential competitors of TV2 to challenge the position of TV2 as the only advertising financed national public broadcaster.
386. TV2 has been able to adopt an exclusive distribution strategy and to extract significant royalties in exchange for the rights to distribute TV2 on the DTH satellite platform. These royalties have been higher than the royalties paid for the distribution of other TV channels on DTH satellite platforms in Norway.
387. There are two buyers on the relevant wholesale market, both with considerable bargaining power. TV2 has been dependent on reaching an agreement with at least one of them for the distribution of its channel(s) on the DTH platform. This has nevertheless not prevented TV2 from adopting an exclusive distribution strategy. Since TV2 has used a tender procedure to select its distributor on the DTH platform the DTH satellite distributors have had limited scope for exercising buyer power vis-à-vis TV2.
388. It may therefore be presumed that TV2 has enjoyed a position of economic strength on the relevant wholesale market equivalent to a dominant position within the meaning of Article 54 EEA.

²⁰⁶ Letter by Viasat dated 14 January 2004, pages 2-3 [185531].

²⁰⁷ See e.g. Reply from Viasat, dated 29 June 2006 [380036].

17.3.3 Abuse

17.3.3.1 The alleged abusive refusal to supply

389. The concept of refusal to supply covers not only outright refusal but also situations where dominant firms make supply subject to objectively unreasonable conditions. Such conditions may be a refusal to supply otherwise than on terms which the supplier, for objective reasons, knows to be unacceptable - a constructive refusal - or a refusal to supply other than on the basis of unfair conditions.²⁰⁸
390. As mentioned in section 16.5 above, TV2 has invited Viasat to bid for the rights to distribute TV2 on the DTH satellite platform in 2003 and 2005. Viasat did not make the highest bid and the distribution rights were granted to the other bidder, Canal Digital.
391. The investigation of the Authority into both the negotiations in 2003 and the tender procedure and the related tender conditions in 2005 has not uncovered any evidence which suggests that, at either of these points in time, the competition for the rights to distribute TV2 was not real. As far as the Authority has been able to ascertain, Canal Digital was not given any preferential treatment when bidding for the rights to distribute TV2.
392. It would therefore appear that TV2 has only been willing to deal with Viasat on certain conditions. In particular it has chosen to use a tender procedure and grant the rights to distribute TV2 on the DTH satellite platform to the highest bidder. This cannot amount to a constructive refusal to supply within the meaning of Article 54 EEA whereby TV2 has made supply subject to objectively unreasonable conditions.
393. In any event the conditions laid down in case law for imposing a duty to supply do not appear to be fulfilled in the present case.²⁰⁹
394. First, TV2 would have to constitute, upstream, an indispensable input factor in the downstream supply of TV distribution services on the relevant retail market.²¹⁰
395. Moreover, it has been held that, in order for the refusal by an undertaking which owns a copyright to give access to a product or service indispensable for carrying on a particular business to be treated as abusive, three cumulative conditions must be satisfied, namely, that that refusal is preventing the emergence of a new product for which there is a potential consumer demand, that it is unjustified and such as to exclude any competition on a secondary market.²¹¹
396. As regards the condition regarding indispensability, it cannot be established from the Authority's investigation that TV2 has represented an indispensable input factor for the supply of TV distribution services on DTH satellite platforms. This is very unlikely to be the case when TV2 has been available as free-TV for a large majority

²⁰⁸ See Commission decision in Case No COMP/C-1/36.915 *Deutsche Post AG* (OJ L 331, 15.12.2001, p. 40), paragraph 141; and Case No COMP/35.134 *Trans-Atlantic Conference Agreement* (OJ L 95, 9.4.1999, p. 1), paragraph 553.

²⁰⁹ See in particular Case C-418/01 *IMS Health* [2004] ECR I-5039; and Case C-7/97 *Bronner* [1998] ECR I-7791.

²¹⁰ Case C-418/01 *IMS Health*, cited above, paragraph 39.

²¹¹ Case C-418/01 *IMS Health*, cited above, paragraph 38.

of Norwegian households. Moreover, Viasat has been the only DTH satellite platform with access to a number of TV channels which are controlled by MTG. It remains to be explained why it would be impossible to operate a TV distribution platform under these conditions without access to TV2.

397. Moreover, it does not appear that the lack of access to TV2 would exclude any competition on the secondary market. The assessment in section 16.5 above shows that it has been possible for Viasat to maintain a presence in the relevant retail market without TV2 on its platform. Even when regarding the market segment which only buys non-premium pay-TV services in isolation, it cannot be established that the lack of access to TV2 is the main reason for the weaker presence of Viasat in this segment.
398. Consequently, TV2's market behaviour does not appear to amount to an abusive refusal to supply contrary to Article 54 EEA.

17.3.3.2 The alleged abusive conclusion of exclusive distribution agreements with Canal Digital

399. The claim that TV2 as a dominant undertaking cannot enter into exclusive agreements, cannot be upheld. For there to be an abuse the conduct of the dominant company must have the effect of hindering the maintenance of the degree of competition still existing in the market or the growth of that competition.²¹² While the effect referred to in case law does not necessarily relate to the actual effect of the abusive conduct complained of it must at least be established that the abusive conduct of the undertaking in a dominant position tends to restrict competition or, in other words, that the conduct is capable of having that effect.²¹³
400. In the relevant wholesale market on which TV2 can be presumed to have a dominant position TV2 is the only supplier. There are therefore no competitors of TV2 in this market which are affected by TV2's exclusive distribution strategy on the DTH satellite platform and the agreements concluded between TV2 and Canal Digital in 2003 and 2005. Neither is the position of other TV channels in neighbouring wholesale markets negatively affected by this conduct of TV2. Thus the conduct of TV2 in the relevant wholesale market has not been capable of having anti-competitive effects in that market or in neighbouring wholesale markets.
401. TV2 has itself not been active on the relevant market for the provision of pay-TV services further downstream as has Canal Digital. In light of the Authority's findings in section 16.5 and section 17.2.3 above, it cannot be concluded from the available evidence that the market behaviour of TV2 in the upstream wholesale market has resulted in an abuse which has affected competition on the relevant retail market.
402. TV2 is active on the TV-advertising market. The effect of TV2's conduct in the relevant wholesale market would only indirectly affect competition in the TV advertising market. On the basis of the existing evidence the Authority cannot immediately see that it can be held that the market behaviour of TV2 in the relevant

²¹² Case 85/76 *Hoffmann-La Roche v Commission*, cited above, paragraph 91; Case *NV Nederlandsche Banden Industrie Michelin v Commission* (Michelin I) [1983] ECR 3461, paragraph 70; Case C-62/86 *AKZO Chemie BV v Commission*, cited above, paragraph 69; Case T-228/97, *Irish Sugar plc v Commission* [1999] ECR II-2969, paragraph 111.

²¹³ Case T-203/01 *Manufacture française des pneumatiques Michelin v Commission* (Michelin II) [2003] ECR II-4071, paragraph 239; Case T-219/99 *British Airways v Commission* [2003] ECR II-5917, paragraph 250.

wholesale market has had such effects in the TV advertising market that TV2's market behaviour could be regarded as abusive. The Authority has not found sufficient reasons to assess this issue in detail.

403. Consequently, the Authority takes the view that on the basis of the information available at this stage TV2's conduct in relation to the conclusion of the exclusive distribution agreements between TV2 and Canal Digital in 2003 and 2005 cannot be regarded as an abuse within the meaning of Article 54 EEA on the part of TV2.

18 CONCLUSION

404. The Authority considers that it cannot be concluded from the evidence available that there has been an infringement of Article 53 or 54 EEA. Moreover, further investigation into the matter would appear disproportionate in view of the extensive investigation that has already been carried out, the complexity of the investigation which would be required and the limited likelihood of establishing the necessary proof of an infringement.
405. In view of all the above considerations, the Authority has therefore come to the provisional conclusion that there is insufficient interest under the EEA Agreement for the continuation of the investigation.

19 PROCEDURE

406. For the reasons set out above, the Authority considers that there are insufficient grounds for acting on the complaint.
407. According to Article 7(1) of Chapter III of Protocol 4 to the Surveillance and Court Agreement, you may submit your comments to this letter if you consider it appropriate to do so. We would ask you to submit such comments in writing to the Authority within **eight weeks** from the date of receipt of this letter. Please note that any additional information received from you thereafter will not be taken into account.
408. If you fail to submit any comments within this time-limit, your complaint shall be deemed to have been withdrawn in accordance with Article 7(3) of Chapter III of Protocol 4 to the Surveillance and Court Agreement. The information you have submitted will, in such a case, remain in our possession as useful market information.
409. Pursuant to Article 8(1) of Chapter III of Protocol 4 to the Surveillance and Court Agreement, the Authority offers you the opportunity to acquaint yourself with the documents on which the Authority has based its provisional assessment. You will be provided with a list of these documents shortly. Copies of the non-confidential versions of documents that are not yet in your possession will be provided upon request.
410. The Authority reserves the right to send a copy of both this letter and any comments you submit thereon to TV2 AS and Canal Digital AS. If you consider that certain parts of this letter contain confidential information, I should be grateful if, within **three weeks** from the date of its reception, you would inform one of the case handlers, Tormod S. Johansen, Tel. +32 2 286 1841 or Runa Monstad, Tel. +32 2 286 1842, specifying the confidential information in question and giving your reasons for treating them as such. Should you intend to provide comments in response to this

letter, please also ensure that a non-confidential version is submitted to the extent that your comments contain information of a confidential nature.

Yours faithfully,

Kristján Andri Stefánsson
College Member

Annex 1: TV channels and program category

	News in Norwegian	TV Series	Movies	Sport	Children's/youth programming	Debates	Quiz/game shows	Other entertainment	Public information	Nature	Culture	Popular music	Other
Percentage of viewers who watch program category	68	34	17	30	8	12	4	24	7	5	2	4	10
NRK	X	X	X	X	X	X	X	X	X	X	X	X	X
TV2	X	X	X	X	X	X	X	X	X	X	X	X	X
NRK2	X	X	X	X	X	X	X	X	X	X	X	X	X
TV Norge	X	X	X	X	X	X	X	X	X	X	X	X	X
TV3 ²¹⁴		X	X	X	X		X	X		X	X	X	X
ZTV		X	X	X									X
Canal + ²¹⁵		X	X	X	X			X					
TV 1000 ²¹⁶		X	X	X	X			X				X	X
Dedicated sports channels ²¹⁷				X									
International news channels ^{218 219}				X		X			X	X	X		X
BBC ²²⁰		X	X	X	X	X	X	X	X	X	X	X	X
Documentary/Nature ²²¹								X		X	X		X
Classic movies ²²²		X	X										X
Adult ²²³													X

²¹⁴ Source: www.tv3.no

²¹⁵ Canal Digital's premium content channels. Including Canal+, Canal+ FILM1, Canal+ FILM2, Canal + FILM3, C MORE Film1, C MORE Film2 and Canal+SPORT, Source: www.canalplus.no

²¹⁶ Viasat's premium content channels. Including TV1000, TV1000 Nordic, TV1000 Family, TV1000 Action, TV1000 Classic, TV1000 Plus one, source: www.tv1000.no

²¹⁷ Eurosport, Eurosport 2, Extreme Sport, Viasat Sport1, SportN, Viasat Sport2, Viasat Sport 3, Viasat Sport24, Chelsea TV, Manchester United TV, Liverpool TV, Source: www.eurosport.com, www.extreme.com, www.viasat.no.

²¹⁸ Including CNN, SkyNews, Bloomberg television, FoxNews. Source: www.skynews.co.uk, www.cnn.com, www.foxnews.com

²¹⁹ These channels feature news broadcasts mainly in English

²²⁰ Including BBC World, BBC Prime, BBC Food. Source: www.bbc.co.uk, www.bloomberg.com.

²²¹ Discovery Channel, Animal Planet, National Geographical Channel, Travel Channel, Viasat History, Viasat Nature, Viasat Explorer, Reality TV, source: www.discoverychannel.no, www.ngcnorge.com, www.travelchannel.co.uk

²²² Hallmark, Turner Classic Movies (TCM) Source> www.tcm.turner.com

²²³ Adult Channel, Playboy TV

	News in Norwegian	TV Series	Movies	Sport	Children's/youth programmes	Debates	Quiz/game shows	Other entertainment	Public information	Nature	Culture	Popular music	Other
Music Channels ²²⁴	X										X	X	
Childrens channels ²²⁵						X							
TV Shopping ²²⁶													X
Others ²²⁷								X			X	X	X

²²⁴ Music Television (MTV), VH1, VH1 classic, TV Voice TV, Source: www.mtve.com, www.vh1.com, www.thevoice.no

²²⁵ Jetix, Cartoon Network, Disney Channel, Toon Diisney, Nickelodeon, source: www.disneychannel.com, www.nickelodeon.com

²²⁶ TV Shop, tving.com Source: www.viasat.no, www.canaldigital.no

²²⁷ Start Channel, ETV

Annex 2: Viewer shares, weekly basis 2005

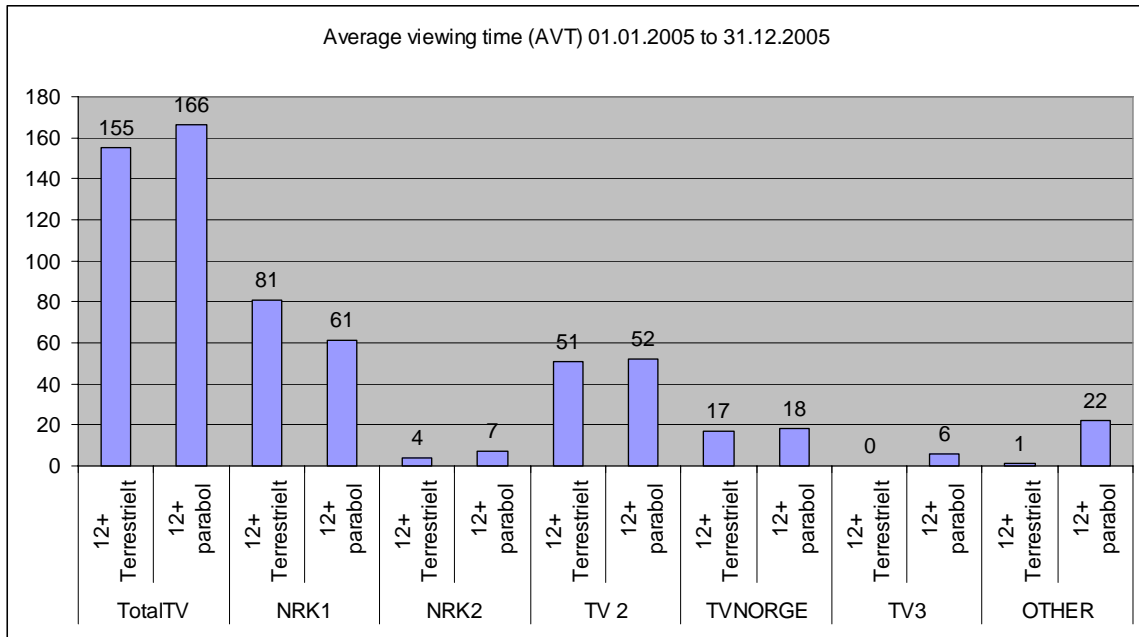
	NRK1	NRK2	TV 2	TVNORGE	TV3	OTHER
Dates	Shr%	Shr%	Shr%	Shr%	Shr%	Shr%
*Week 53/04 (01.01.2005 - 02.01.2005)	44.70	2.74	26.07	10.86	5.62	10.00
Week 1/05 (03.01.2005 - 09.01.2005)	47.20	4.67	24.79	9.18	4.88	9.29
Week 2/05 (10.01.2005 - 16.01.2005)	45.51	5.23	24.62	10.07	5.24	9.33
Week 3/05 (17.01.2005 - 23.01.2005)	47.11	3.45	26.13	9.15	5.08	9.08
Week 4/05 (24.01.2005 - 30.01.2005)	43.44	2.98	29.97	10.22	4.62	8.78
Week 5/05 (31.01.2005 - 06.02.2005)	39.22	2.78	33.15	11.18	4.80	8.87
Week 6/05 (07.02.2005 - 13.02.2005)	43.68	3.19	27.64	11.11	5.90	8.49
Week 7/05 (14.02.2005 - 20.02.2005)	48.46	3.76	25.17	9.82	4.83	7.96
Week 8/05 (21.02.2005 - 27.02.2005)	53.89	3.23	23.41	8.21	4.34	6.92
Week 9/05 (28.02.2005 - 06.03.2005)	46.11	4.36	26.60	10.03	4.96	7.95
Week 10/05 (07.03.2005 - 13.03.2005)	49.60	3.83	24.48	9.86	4.96	7.26
Week 11/05 (14.03.2005 - 20.03.2005)	45.53	3.67	26.88	10.75	5.08	8.09
Week 12/05 (21.03.2005 - 27.03.2005)	38.59	4.53	27.26	12.62	6.26	10.74
Week 13/05 (28.03.2005 - 03.04.2005)	38.53	3.35	29.54	11.42	7.19	9.98
Week 14/05 (04.04.2005 - 10.04.2005)	38.43	3.75	30.21	11.49	6.65	9.48
Week 15/05 (11.04.2005 - 17.04.2005)	36.46	3.37	31.66	12.47	7.16	8.88
Week 16/05 (18.04.2005 - 24.04.2005)	36.16	3.83	31.43	12.24	6.62	9.73
Week 17/05 (25.04.2005 - 01.05.2005)	34.91	3.50	32.46	12.32	6.84	9.98
Week 18/05 (02.05.2005 - 08.05.2005)	34.16	3.86	32.32	12.13	6.81	10.72
Week 19/05 (09.05.2005 - 15.05.2005)	34.04	3.09	34.13	11.86	6.49	10.38
Week 20/05 (16.05.2005 - 22.05.2005)	38.38	3.73	31.89	10.18	5.98	9.83
Week 21/05 (23.05.2005 - 29.05.2005)	32.87	3.53	33.40	11.40	8.14	10.67
Week 22/05 (30.05.2005 - 05.06.2005)	37.03	3.76	29.46	12.15	6.66	10.94
Week 23/05 (06.06.2005 -	38.08	4.29	27.14	12.33	7.41	10.75

	NRK1	NRK2	TV 2	TVNORGE	TV3	OTHER
12.06.2005)						
Week 24/05 (13.06.2005 - 19.06.2005)	38.12	4.40	27.39	12.38	6.76	10.95
Week 25/05 (20.06.2005 - 26.06.2005)	34.44	4.51	29.09	14.18	6.99	10.79
Week 26/05 (27.06.2005 - 03.07.2005)	36.99	4.48	28.96	11.40	6.14	12.02
Week 27/05 (04.07.2005 - 10.07.2005)	35.96	3.47	32.02	11.42	5.51	11.63
Week 28/05 (11.07.2005 - 17.07.2005)	35.56	3.73	31.09	11.57	5.81	12.25
Week 29/05 (18.07.2005 - 24.07.2005)	35.30	3.53	32.55	11.00	5.84	11.77
Week 30/05 (25.07.2005 - 31.07.2005)	36.65	3.76	27.82	11.96	6.83	13.00
Week 31/05 (01.08.2005 - 07.08.2005)	40.18	4.70	25.69	11.06	6.21	12.15
Week 32/05 (08.08.2005 - 14.08.2005)	39.58	5.64	24.87	10.55	7.38	11.98
Week 33/05 (15.08.2005 - 21.08.2005)	35.19	3.73	32.33	11.39	6.47	10.89
Week 34/05 (22.08.2005 - 28.08.2005)	35.14	3.53	31.60	10.43	7.47	11.83
Week 35/05 (29.08.2005 - 04.09.2005)	37.56	3.39	30.30	11.04	7.01	10.70
Week 36/05 (05.09.2005 - 11.09.2005)	36.16	3.61	33.77	10.81	5.61	10.05
Week 37/05 (12.09.2005 - 18.09.2005)	39.97	3.32	30.38	10.95	6.28	9.10
Week 38/05 (19.09.2005 - 25.09.2005)	39.45	3.52	30.55	11.26	5.22	10.00
Week 39/05 (26.09.2005 - 02.10.2005)	36.72	3.87	31.22	11.85	6.92	9.41
Week 40/05 (03.10.2005 - 09.10.2005)	38.80	3.22	31.05	11.98	5.50	9.46
Week 41/05 (10.10.2005 - 16.10.2005)	37.70	3.63	29.63	12.14	7.31	9.59
Week 42/05 (17.10.2005 - 23.10.2005)	40.50	3.56	29.01	11.43	6.72	8.78
Week 43/05 (24.10.2005 - 30.10.2005)	38.26	3.73	29.84	12.95	5.73	9.50
Week 44/05 (31.10.2005 - 06.11.2005)	35.97	3.00	33.07	12.26	6.82	8.88
Week 45/05 (07.11.2005 - 13.11.2005)	35.88	3.91	33.95	11.81	5.63	8.83
Week 46/05 (14.11.2005 - 20.11.2005)	39.00	2.78	30.37	11.75	7.24	8.86
Week 47/05 (21.11.2005 - 27.11.2005)	40.96	4.23	30.65	9.66	6.52	7.99
Week 48/05 (28.11.2005 - 04.12.2005)	42.38	4.10	29.70	9.76	5.59	8.48

	NRK1	NRK2	TV 2	TVNORGE	TV3	OTHER
Week 49/05 (05.12.2005 - 11.12.2005)	40.99	4.26	31.09	9.06	5.87	8.72
Week 50/05 (12.12.2005 - 18.12.2005)	41.22	5.71	30.15	8.16	5.78	8.98
Week 51/05 (19.12.2005 - 25.12.2005)	39.75	4.49	30.21	9.67	6.09	9.79
*Week 52/05 (26.12.2005 - 31.12.2005)	44.83	3.99	23.51	10.37	6.76	10.53
01.01.2005 to 31.12.2005	40.11	3.81	29.37	10.97	6.10	9.63

Annex 3: Average viewing time in minutes 2005

Universes: 12+ Terrestrial viewers and 12+ Satellite DTH viewers



Annex 4: Pay-TV packages in Norway

All prices (from October 2006) given in NOK and based on contract for at least one year.

Abbreviations:

Monthly Fee (“MF)

Card fee (“CAF”)

Connection fee (“COF”)

Yearly fee (“YF”)

Cable packages

GET²²⁸

<p>Basic package: MF: 199 / month (89 for subscribers that already got the analogue basic package) CAF: Included (498 from 1.1.2007)</p> <p>Yearly cost: 2.388</p>	<p>NRK1, NRK2, TV2, TV2 Zebra, TVNorge/TV Oslo*</p> <p>TV3, SVT1, SVT2, MTV, ZTV, Eurosport, SportN, Discovery, Travel Channel, National Geographic, Crime Viasat, Nature Viasat, CNN, Disney Channel, Cartoon Network, TV2Film, BBC World, Euro News, French TV5, NRK1 Tengspråk</p>
<p>Family package</p> <p>MF: 299 / month (189 for subscribers that already got the analogue basic package) YF: 498</p> <p>Yearly cost: 4.086</p>	<p>In addition to the channels in the basic package:</p> <p>Svensk TV4, Disney Toon, Jetix, Nickleodeon, Animal Planet Discovery Civilisation, Discovery Science, Discovery Travel & Living, Explorer Viasat, Adventure 1, Showtime, Hallmark, TCM, Sky News, Bloomberg, CNBC, Eurosport, Extreme, Motors TV, Voice TV, VH1, BBC Prime, BBC Food, Star TV, Zone Reality TV, Zone Club TV, God Digital</p>
<p>TV 1000 package</p> <p>MF: 219 / Month + 199 (Basic package) YF: Included (498 from 1.1.2007)</p> <p>Yearly cost: 5.016</p>	<p>TV1000, TV1000 Action, TV1000 Classic, TV1000 Family, TV1000 Nordic, TV1000 Plus One</p>
<p>Canal +</p> <p>MF: 249 / month + 199 (Basic package) YF: Included (498 from 1.1.2007)</p> <p>Yearly cost: 5.376</p>	<p>Canal+</p>

²²⁸ <http://upc.no/>

Canal Digital Cable²²⁹

<p>Basic package:</p> <p>MF: 199 / month CAF: 299</p> <p>Yearly cost: 2.687</p>	<p>NRK 2, NRK 1 , TV2*</p> <p>TV2 Zebra, Lokal-TV/TV Norge, TV3, TV4 Svensk, SVT 1, SVT 2, SHO (Showtime Scandinavia), Eurosport, Disney Channel, The Voice, Showtime/Star, Discovery Channel, BBC World, National Geographic, Animal Planet.</p>
<p>Family package</p> <p>MF: 149 / month + 199 (Basic package) = 348 CAF: 299</p> <p>Yearly cost: 4.475</p>	<p>Basic package plus:</p> <p>Film 2, CNBC Nordic, VH1, VH1 classics, TCM, BBC Food, Sky News, Discovery Civilisation, Eurosport 2, Extreme Sport, Discovery Travel & living, Discovery Science, Sport N, Viasat Crime, Viasat Nature, Z TV, Playboy TV, Adult channel, Playhouse Disney, TOON Disney, Cartoon Network, Nickelodeon, Tracel channel, Jetix, music choice.</p>
<p>TV 1000/Sport package</p> <p>MF: 222 / month + 199 (Basic package) = 421 CAF: 299</p> <p>Yearly cost: 5.351</p>	<p>TV1000, TV1000 Plus One, TV1000 Nordic, Sport 2, Sport 3, TV1000 Action, TV1000 Family, TV1000 classic</p>
<p>Canal + package</p> <p>MF: 251 / month + 199 (Basic package) = 450 CAF: 299</p> <p>Yearly cost: 5.699</p>	<p>Canal+, Canal+ Film1, Canal+ Film2, Canal+ Film3, Canal+ Sport, C More Film, C More Film2</p>

²²⁹ <http://canaldigital.no/>

Satellite packages

Prices do not including establishment/start-up fees

*Viasat DTH satellite*²³⁰

<p>Viasat Start:</p> <p>MF: 99 NOK / month CAF: 349 / 6 month</p> <p>Yearly cost: 1.886</p>	<p><u>NRK 1</u>, <u>NRK 2</u></p> <p>Norwegian TV3, Danish TV3, Swedish TV3, Norwegian ZTV, Swedish ZT, SportN, Viasat History, Viasat Explorer, <u>CNN</u>, <u>Jetix</u> [12]</p>
<p>Viasat Silver</p> <p>MF: 199 NOK / month CAF: 349 / 6 month</p> <p>Yearly cost: 3.086</p>	<p>All of the above, plus:</p> <p>3+, E!, TV Shop, Viasat Extra, Viasat Crime, Swedish Viasat Sport 1, Danish Viasat Sport 1, <u>TCM</u>, <u>Hallmark</u>, Viasat Ticket, <u>Disney Channel</u>, <u>Toon Disney</u>, Playhouse Disney, <u>Nickelodeon</u>, <u>Cartoon Network</u>, Viasat nature, <u>National Geographic</u>, Viasat Travel, Reality TV, <u>BBC World</u>, <u>CNBC</u>, Bloomberg, TV8, DW-TV, <u>MTV</u>, <u>VH1</u> [26]</p>
<p>Viasat Gold</p> <p>MF: 319 / month. CAF: 349 / 6 month</p> <p>Yearly cost: 4.526</p>	<p>All of the above, plus:</p> <p>TV1000, TV1000 Nordic, TV1000 Family, TV1000 Action, TV1000 Classic, TV1000 Plus one, Playboy TV, Spice, Viasat Sport 2, Viasat Sport 3, Viasat Sport 24, Chelsea, Liverpool, MU, Milan [15]</p>
<p>Viasat +</p> <p>MF: (Visat Gold) 319 + 99 / month. CAF: 349 / 6 month</p> <p>Yearly cost: 5.714</p>	<p>No additional channels provided, only additional services</p>

²³⁰ <http://www.viasat.no/>

Canal Digital DTH satellite²³¹

<p>Local</p> <p>MF: 0 / Month CAF: 699 / 6 months</p> <p>Yearly cost: 1.298</p>	<p><u>NRK 1</u>, <u>NRK2</u>, TV2, TV2 Zebra, TV Norge [5]</p>
<p>Family</p> <p>MF: 229 NOK / month CAF: 399 / 6 months</p> <p>Yearly cost: 3.546</p>	<p>All of the above, plus:</p> <p>TV2 Film kanalen, <u>CNBC</u>, <u>CNN</u>, Eurosport, Eurosport2, Extreme, <u>BBC World</u>, BBC Prime, BBC Food, Sky News, <u>Bloomberg</u>, <u>Hallmark</u>, Discovery Channel, <u>National Geographic</u>, Animal Planet, Travel channel, <u>TCM</u>, Fox News, Lifestyletv, MTV, The Voice, <u>VH1</u>, Classic 1, Star, Jetix, <u>Cartoon Network</u>, <u>Disney</u>, <u>Toon Disney</u>, <u>Nickelodeon</u>, Tvins, Travel & Living, Adult Channel, Music Choice [33]</p>
<p>Canal+</p> <p>Price: MF: 251 / Month. CAF: 399 / 6 months</p> <p>Yearly cost: 3.810</p>	<p>Local package plus:</p> <p>Canal+, Canal+ Film, Canal+ Film2, Canal+ Film3, Canal+ Sport, C More Film, C More Film2 [7]</p>
<p>Entertain</p> <p>MF: 413 / month CAF: 399 / 6 months</p> <p>Yearly cost: 5.754</p>	<p>All channels above plus:</p> <p>SHQ, Discovery Science, Discovery Civilisation [3]</p> <p>(Bonus channels; CCTV9, Gospel Channel Europe, Moooby.TV, Visjon Norge)</p>

²³¹ <http://canaldigital.no/>

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