

**FORM FOR THE SUBMISSION OF COMPLAINTS CONCERNING ALLEGED
UNLAWFUL STATE AID OR MISUSE OF AID**

The mandatory fields are marked with a star (*).

1. Information regarding the complainant

First Name:* Damien

Surname:* Geradin

Address line 1:* Avenue Louise 475

Address line 2: N/A

Town/City:* Brussels

County/State/Province: N/A

Postcode:* 1000

Country:* Belgium

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Mobile Telephone: [REDACTED]

E-mail addresses: [REDACTED]

Fax: N/A

2. I am submitting the complaint on behalf of somebody (a person or a firm)

Yes* **No***

If yes, please also provide the following information

Name of the person/firm you represent*: Sanoma Media Finland Oy

Registration nr. of the entity: FI 1515901-4

Address line 1:* Töölönlahdenkatu 2

Address line 2: (postal address)

Town/City:* Helsinki

County/State/Province: N/A

Postcode:* 00100

Country:* Finland

Telephone 1: [REDACTED]

Telephone 2: [REDACTED]

E-mail address: [REDACTED]

Fax: N/A

Please attach proof that the representative is authorized to act on behalf of this person/firm.* We refer to the Power of Attorney in Annex 4.

3. Please select one of the following options, describing your identity*

- a) Competitor of the beneficiary or beneficiaries
- b) Trade association representing the interests of competitors
- c) Non-governmental organisation
- d) Trade union
- e) EU citizen
- f) **Other**, please specify

Lawyer representing a competitor of the beneficiary of the aid.

Please explain why and to what extent the alleged State aid affects your competitive position / the competitive position of the person/firm you represent. Provide as much concrete evidence as possible.

Please be aware that, by virtue of Article 20(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union, only interested parties within the meaning of Article 1(h) of that Regulation may submit formal complaints. Therefore, in the absence of a demonstration that you are an interested party, the present form will not be registered as a complaint, and the information provided therein will be kept as general market information.

Sanoma Oyj (“**Sanoma**”) is a Finnish media and learning company, listed on the Helsinki Nasdaq stock exchange. It consists of two divisions: (i) Sanoma Media Finland, a multi-channel media company offering, TV and radio channels, video-on-demand (“**VOD**”) and audio-on-demand services, as well as newspapers and magazines, and (ii) Sanoma Learning, offering educational publishing and services.

Sanoma, as a private competitor, is directly affected by the public funding to the Finnish public service broadcaster Yleisradio Oy (“**Yle**”) for the provision of its VOD and online learning services. The present Complaint targets the State funding for the provision of such services by Yle.

As a result of the public funding of Yle's VOD and online learning services, which allows Yle to offer such services for free, Sanoma's ability to generate subscription and other commercial revenues from its VOD and online learning offerings is seriously affected. This is because, with this funding, Yle enters already existing competitive markets, where Sanoma is active. Therefore, Sanoma, as Yle's competitor in the provision of VOD and online learning services, is an interested party within the meaning of Article 1(h) of Council Regulation 2015/1589.

4. Please select one of the following two options*

- Yes, you may reveal my identity
- No, you may not reveal my identity

If not, please specify the reasons:

Confidentiality: If you do not wish your identity or certain documents or information to be disclosed, please indicate this clearly, identify the confidential parts of any documents and give your reasons. In the absence of any indication about confidentiality of your identity or certain documents or information, those elements will be treated as non-confidential and may be shared with the Member State allegedly granting the State aid. The information contained in points **5 and 6** cannot be designated as confidential.

5. Information regarding the Member State granting the aid*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Country: Finland

b) If known, specify which institution or body granted the alleged unlawful State aid:

Central government: The Finnish State collects the so-called Yle tax, an annual broadcasting tax (*Yle-vero*) paid by every adult resident of Finland, as well as any legal person engaged in business operations, vocational practice or agriculture in Finland (although certain groups of taxpayers are exempted due to their low income). The revenues generated by the Yle tax are then transferred from the State Budget to the State Television and Radio Fund (*fi.Valtion televisio- ja radiorahasto*) managed by the Finnish Transport and Communications Agency ("**Traficom**"). YLE's activities (including VOD and online learning services) are financed with funds transferred to Yle from the State Television and Radio Fund.

Region (please specify): N/A.

Other (please specify): N/A.

6. Information regarding the alleged aid measure*

Please be aware: the information provided under this point is regarded as non-confidential.

a) Please provide a description of the alleged aid, and indicate in what form it was granted (loans, grants, guarantees, tax incentives or exemptions etc.).

The Finnish State provides annual illegal State aid to Yle in the form of a direct transfer of funds used by the company to offer VOD and online learning services.

As indicated in Section 5b of the present Form, the Finnish State collects the Yle tax from every adult resident of the country, as well as legal entities engaged in business operations, vocational practice or agriculture in Finland. The revenues produced by the Yle tax are transferred yearly from the State Budget to the extra-budgetary State Television and Radio Fund, managed by Traficom, to cover the costs accrued by Yle in “the provision of public service laid down in section 7 of the Act on Yleisradio Oy.” Pursuant to the Act on the State Television and Radio Fund (*fi. Laki valtion televisio- ja radiorahastosta; 745/1998*), Yle’s activities are financed with funds out of the above-mentioned Fund.

Sanoma refers to [Annex 5a](#) for more information.

b) For what purpose was the alleged aid given (if known)?

The funding granted to Yle by the Finnish State is in theory to finance Yle’s public broadcasting activities. However, in practice, given the high, stable and guaranteed income resulting from the Yle tax (which is transferred to Yle regardless of the actual costs it incurs in the provision of its public service activities), Yle uses the public funding to finance the costs of other services, which are not part of the public service remit, such as VOD and online learning services.

More precisely, Yle uses the illegal aid to finance the costs related to its VOD and online learning offerings, such as the production and acquisition of rights and content, personnel costs, IT, technology, and infrastructure costs.

c) What is the amount of the alleged aid (if known)? If you do not have the exact figure, please provide an estimate and as much justifying evidence as possible.

In 2019, the net revenue Yle generated from the Yle tax amounted to €471.9 million, representing 98.2% of Yle’s total income. According to Sanoma’s best and conservative estimates, Yle’s direct (incremental) costs related to the provision of VOD services going beyond catch-up services (i.e., services that allow viewers to watch content already broadcasted on Yle’s TV channels for a limited period of time after the original broadcast) amount to a total of € [REDACTED] yearly. With respect to online learning services, Sanoma estimates that Yle’s direct (incremental) costs amount to a total of € [REDACTED] yearly.

For more details on this point Sanoma refers to [Annex 5a](#).

d) Who is the beneficiary? Please give as much information as possible, including a description of the main activities of the beneficiary/firm(s) concerned.

Yle, the beneficiary of the illegal aid, is a state-owned limited liability company acting as the sole public broadcaster in Finland. It operates within the administrative branch of the Finnish Ministry of Transport and Communication.

Yle's activities are governed by the Act on the Finnish Broadcasting Company (the *Laki Yleystoiminnasta 1380/1993* ("Yle Act"), as amended). Pursuant to Section 7 of the Yle Act, Yle is responsible for the provision of "*versatile and comprehensive television and radio programming with the related additional and extra services for all citizens under equal conditions. These and other content services related to public service may be provided in public communications networks nationally and regionally.*"

On the basis of this mandate, Yle offers broadcasting services through its TV and radio channels and Yle Areena, an online media service, which allows viewers to live-stream Yle's TV and radio channels and to catch up with content already broadcasted on Yle's channels (and, increasingly, to watch on-demand content as part of Yle's VOD offering, which goes beyond Yle's broadcasting activities).

Yle has been increasingly engaging in non-broadcasting online activities, while however relying on public funding to do so.

Yle has significantly expanded its VOD offering through Yle Areena, which now goes far beyond the online offering of traditional catch-up services. Yle Areena's VOD service now offers for free, and for an unlimited duration, international and domestic content that has not already been broadcasted on Yle's channels, and that, arguably, does not meet the "*democratic, social and cultural needs*" of society (i.e., the purpose of public service media) – e.g., titles that fall under the "reality entertainment" category. Yle is pursuing a strategy of making Areena an SVOD-like service.

Yle has also expanded its online learning services and is expected to continue to do so in the future. Yle originally offered learning services through the Koulu-radio and Koulu-TV (which were addressed to primary schoolers and covered in their emissions lessons and knowledge useful to kids). Later, Yle started offering Yle Oppiminen a web service/portal mainly targeted to students, but also offering materials for teachers. Through the Oppiminen website/portal, Yle offers additional/complementary materials for primary and secondary education to be used in-class or outside, as well as materials for adult learning, in particular foreign languages, which are to a certain extent also used in upper secondary education instead of materials published by commercial publishers. Through the Abitreenit website/portal, Yle offers a wide variety of materials covering all of the main subjects of upper secondary school, which can be used in the preparation of students for the Matriculation Exam (i.e., a national exam taken at the end of the Finnish upper secondary school, which entitles students to continue their studies at university or other institutions of higher education). Most recently, Yle started offering Triplet, a free service for teachers which collects the most interesting news of each day and turns them into learning materials, by creating exercises and complementary materials that can be used in class.

For a more detailed description of YLE's activities, Sanoma refers to [Annex 5a](#).

e) To your knowledge, when was the alleged aid granted?

Yle has been receiving public funding for the provision of VOD and learning services on a yearly basis for several years. This is because Yle receives from the Finnish State funding on the basis of a price floor set in 2013 (€500 million yearly) which is to be adjusted (i.e., increased) annually to reflect changes in the cost of living and cost of labour, but *not* to reflect the costs Yle actually undertakes to carry out public service activities. In other words, Yle receives funding from the Finnish State (in theory to only engage in broadcasting activities) but, in practice, it is solely responsible for deciding how to use / allocate this funding.

In recent years, Yle has been allocating more of the budget it receives from the Finnish State on its VOD and online learning services offering. Thus, the public funding for the provision of these services has increased significantly in the last years and is expected to continue to increase in the future. Yle's future strategy depends heavily on its Areena SVOD-like VOD offering, and Yle's online learning offering is only estimated to expand with more resources being spent on such services.

Sanoma refers to [Annex 5a](#) for a more information.

f) Please select one of the following options:

- According to my knowledge, the State aid was not notified to the Commission.**
- According to my knowledge, the State aid was notified, but it was granted before the decision of the Commission. If known, please indicate the notification reference number or indicate when the aid was notified.

- According to my knowledge, the State aid was notified and approved by the Commission, but its implementation did not respect the applicable conditions. If known, please indicate the notification reference number or indicate when the aid was notified and approved.

- According to my knowledge, the State aid was granted under a block exemption regulation, but its implementation did not respect the applicable conditions.

7. Grounds of complaint*

Please note that, for a measure to qualify as State aid under Article 107(1) TFEU, the alleged aid has to be granted by a Member State or through State resources, it has to distort or threaten to distort competition by favouring certain undertakings or the production of certain goods, and affect trade between Member States.

a) Please explain to what extent public resources are involved (if known) and, if the measure was not adopted by a public authority (but for instance by a public undertaking), please explain why, in your view, it is imputable to public authorities of a Member State.

As already described, Yle receives funding through State resources to finance its VOD offering and online learning services. The Yle tax collected by the Finnish State is included into the Finnish State Budget, from which funds are transferred to a special, extra-budgetary State Television and Radio Fund, which is managed by a state agency, Traficom. The funds transferred to said Fund are used to finance Yle's activities, including its VOD and online learning services. In conclusion, there is no doubt that the funding of Yle (including with respect to VOD and online learning services) involves State resources and can be attributed to the Finnish State within the meaning of Article 107(1) TFEU.

b) Please explain why, in your opinion, the alleged State aid is selective (i.e. favours certain commercial undertakings or the production of certain goods).

Pursuant to applicable national legislation, Yle is the only undertaking in Finland that is financed through State resources for the provision of online learning services and VOD. Therefore, the aid in question is *by law* selective.

c) Please explain how, in your opinion, the alleged State aid provides an economic advantage for the beneficiary or beneficiaries.

Whether the aid granted to Yle can be regarded as providing an economic advantage to its recipient is assessed in the light of the four *Altmark* criteria, which are not fulfilled in the case of Yle's public funding.

First, Yle's public service obligations are not clearly defined, as the Yle Act only provides for a vague and open-ended definition of the public service remit. Furthermore, VOD and online learning services do not fall, in Sanoma's view, within the public service remit as defined by the law (*1st Altmark criterion*).

Second, the parameters on the basis of which the yearly compensation paid to Yle is calculated are not established in advance in an objective and transparent manner (*2nd Altmark criterion*). In fact, the way Yle's public funding operates is the exact opposite of what is required under the second *Altmark* criterion: instead of setting out in advance the (expected) costs of Yle's individual public service activities on the basis of which Yle would receive its State funding, Yle receives

a pre-determined annual budget from the Finnish State (set at €500 million in 2013 and since then adjusted on the basis of an index taking into account the cost of living and the cost of labour but *not* Yle's actual costs), which it can then allocate internally as it deems fit.

Third, while due to the lack of transparency surrounding Yle's compensation and costs, it is not possible for Sanoma to examine how Yle's funding for online learning services and VOD compares to its actual costs, this criterion is, in any event, not fulfilled as Yle is not entrusted with the provision of online learning services and VOD, which are not to be considered as public service activities (*3rd Altmark criterion*).

Finally, the funding for Yle's provision of VOD and online learning services has not been determined on the basis of an analysis of the costs that a typical, well-run and adequately equipped undertaking would incur in fulfilling the public service obligations entrusted to Yle. Moreover, no public procurement procedure has taken place to select the operator in charge of carrying out the public service mission, Yle being appointed as the sole public broadcaster by law (*4th Altmark criterion*).

Therefore, the funding for Yle's provision of VOD and online learning services should be regarded as conferring an economic advantage to Yle within the meaning of Article 107(1) TFEU. For a more detailed discussion on this point, Sanoma refers to [Annex 5a](#).

d) Please explain why, in your view, the alleged State aid distorts or threatens to distort competition.

The State aid granted to Yle distorts competition in the Finnish market for online learning services. In this market, commercial actors, such as Sanoma, offer a wide variety of digital learning products and services that are addressed to both students of primary, secondary and vocational education, and teachers. Yle entered this commercial market but, unlike commercial operators which offer their products and services under normal market conditions (i.e., for a fee), Yle can offer competing services for free, as it relies on its public funding. Therefore, the State aid granted to Yle distorts competition in the Finnish market for online learning services, as the availability of similar free products and services reduces consumers' willingness to pay for such products, thus reducing the revenues of commercial operators active in this market and, consequently, their ability to innovate.

When it comes to VOD, Yle's annual high, stable and guaranteed public funding provides an economic advantage which strengthens its position towards private competitors such as Sanoma, which need to finance their activities through commercial revenues. Yle's VOD offering is similar in terms of choice and quality with that of its private competitors. The main difference is that Yle's VOD services is free of charge and without advertisements, whereas competitors like Sanoma need to generate revenues either by charging a fee to the customer or by selling ads.

Yle's VOD offering distorts competition in three ways: First, Yle leverages its large share of viewing in Finnish FTA and strong brand recognition to attract users to its Arena VOD service. Second, as Yle captures users that would have otherwise been served by commercial VOD operators, it negatively impacts their subscription and advertising revenues, threatening the

viability of Sanoma's business. Yle's free offer commoditizes these services and makes it harder for private companies to charge the market price to consumers for the provision of costly and high-quality content. Ultimately, Yle's presence reduces commercial providers' ability to invest and innovate: Finnish private VOD providers see their revenues decrease due to Yle's State-funded presence (which negatively impacts their ability to invest), while at the same time having to compete with Yle (which has a considerably high and guaranteed budget, regardless of any investments and the returns on this investments) with regards to the acquisition and production of content.

It should also be noted that it is likely that without the illegal State aid, Yle would not be active on the VOD segment and the online learning services market. Hence, the market structure is distorted through the presence of a Yle, with direct negative effects for commercial operators. Given that Yle is a significant player on the VOD segment and online learning services market in Finland, the effect of the aid is appreciable, and competition is distorted between Yle and its private competitors.

For a more detailed discussion on how Yle's State-funded presence distorts competition, Sanoma refers to [Annex 5a](#).

e) Please explain why, in your view, the alleged aid affects trade between Member States.

The State funding for Yle's provision of VOD and online learning services affects trade between Member States for the following reasons: first, the ownership structure of Yle's private competitors in VOD and online learning services extends over several Member States. Moreover, many suppliers of VOD or online learning services are active in Member States other than Finland. In addition, VOD and online learning services can be offered to Finnish consumers by undertakings located outside Finland. However, the illegal aid granted to Yle makes market entry more difficult. Furthermore, as Yle's services are also available in the Swedish language, it can reach Swedish-speaking consumers. Finally, Yle and commercial operators (domestic and international) compete for the acquisition of program rights for content made available on their VOD services (which involves intra-Union trade as rights to foreign movies and TV series are also traded).

For a more detailed discussion on this point, Sanoma refers to [Annex 5a](#).

8. Compatibility of the aid

Please indicate the reasons why in your view the alleged aid is not compatible with the internal market.

As explained above, the funding that Yle receives from the Finnish State for the financing of its online learning services and VOD offering constitutes State aid incompatible with the internal market as per Article 107(1) TFEU as: (i) it has been granted by the Finnish State through State resources, (ii) it grants a selective economic advantage to Yle, (iii) it affects trade between

Member States, and (iv) it distorts competition in the Finnish market for online learning services and the VOD segment.

The public funding of Yle's online learning services and VOD offering cannot be exempted from the prohibition of Article 107(1) TFEU on the basis of any of the exemptions provided for in the Treaty or secondary legislation, including the cultural exception of Article 107(3)(d) TFEU, the State aid General Block Exemption Regulation, the Commission Regulation on the application of Articles 107 and 108 of the TFEU to *de minimis* aid granted to undertakings providing services of general economic interest ("SGEI") or the Commission Decision on the application of Article 106(2) TFEU to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of SGEI.

Moreover, the Finnish State cannot rely on the derogation of Article 106(2) TFEU for SGEI to exempt the funding it provides to Yle for the provision of online learning services and VOD, as the conditions of this derogation are not fulfilled in the present case:

First, the provision of online learning services and VOD has not been defined as a SGEI, and in any event, there is no market failure when it comes to either VOD services or learning services that would justify such a definition. Quite the contrary, domestic and international commercial players offer a vast array of high-quality products and services that attend to the preferences and needs of Finnish consumers. In this context, there is no need for a State-funded actor, as user demand when it comes to VOD and online learning services is already met by existing private operators.

Second, Yle has not been properly entrusted with the provision of online learning services and VOD by way of an act (or a series of acts) that meet the criteria set out in relevant EU instruments.

Third, the provision of online learning services and VOD by Yle fails the proportionality test called for under the Article 106(2) derogation, which requires that the public funding of the SGEI provider does not affect the development of trade "to such an extent as would be contrary to the interests of the Union." Yle's State-funded entry into markets, where commercial operators are already active and offer very similar services to those offered by Yle, disproportionately distorts competition. Yle offers its online learning services and VOD at zero price – i.e., below the costs of any commercial operator, as it is funded by the Yle tax. The provision of free products and services by Yle, coupled with its enduring strong position in the Finnish market and strong brand recognition, incentivizes consumers to use Yle's free services instead of similar services offered by commercial operators and reduces their willingness to pay for such products and services. Such a distortion of competition is disproportionate as the services offered by Yle can be offered by commercial operators "at equivalent conditions for the users, in a less distortive manner and at lower cost for the State."

Moreover, the Finnish State cannot invoke the Amsterdam Protocol and the Broadcasting Communication regime to justify the funding it provides to Yle for the financing of its online learning services and VOD, as these services are not "directly related to and necessary for" (ancillary to) Yle's broadcasting activities. But even if the Broadcasting Communication regime were to be applied to assess the compatibility of the public funding of Yle's VOD offering, the conditions for the exemption of such funding under this regime would not be fulfilled: first, Yle's

public service remit has not been clearly defined (neither by law nor through a prior evaluation procedure), second Yle has not been properly entrusted with the offering of VOD, and third, Yle's VOD offering fails the proportionality assessment. Thus, the public funding for the provision of Yle's VOD offering cannot be exempted on the basis of the Broadcasting Communication regime, hence constituting aid incompatible with the internal market.

For a more detailed discussion on the inapplicability of any exemptions to the general prohibition of State aid set out in Article 107(1) TFEU, which entails that the public funding for Yle's provision of online learning services and VOD offering constitutes aid incompatible with the internal market, Sanoma refers to [Annex 5a](#).

9. Information on alleged infringement of other rules of European Union law and on other procedures

a) If known, please indicate what other rules of European Union law you think have been infringed by the granting of the alleged aid. Please be aware that this does not imply necessarily that those potential infringements will be dealt with within the State aid investigation.

Sanoma reserves its right to further expand the complaint at a later stage.

b) Have you already approached the Commission's services or any other European institution concerning the same issue?*

Yes **No**

If yes, please attach copies of correspondence.

c) Have you already approached national authorities or national courts concerning the same issue?*

Yes **No**

If yes, please indicate which authorities or courts; also, if there has already been a decision or judgement, please attach a copy (if available); if, on the contrary, the case is still pending, please indicate its reference (if available).

Sanoma has been in contact with the Finnish Competition and Consumer Authority ("FCCA") to informally brief them about this Complaint. Given the lack of jurisdiction, there is no case pending before the FCCA. In addition, Sanoma has generally voiced its concerns with respect to Yle's public financing in several public hearings and consultations in relation to the preparation of new legislation and policy reviews by the Finnish Government.

d) Please provide any other information that may be relevant for the assessment of this case.

Sanoma refers to the detailed legal assessment prepared by Geradin Partners ([Annex 5a](#)).

10. Supporting documents

Please list any documents and evidence which are submitted in support of the complaint and add annexes if necessary

- Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided.
- Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts).
- If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act.
- Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue.
- If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available.

Whenever possible, a copy of the national law or other measure which provides the legal basis for the payment of the alleged aid should be provided:

- Annex 1: Act on the Finnish Broadcasting Company (1380/1993; as amended)
- Annex 2: Act on the State Television and Radio Fund (745/1998; as amended)

Whenever possible, please attach any available evidence that the State aid was granted (e.g. press release, published accounts):

- Annex 3: Yle, Board of Directors' report and financial statements 2019

If the complaint is submitted on behalf of someone else (a natural person or a firm) please attach proof that you as a representative are authorised to act:

- Annex 4: Power of Attorney

Where applicable, please attach copies of all previous correspondence with the European Commission or any other European or national institution concerning the same issue:

N/A.

If the issue has already been dealt with by a national court/authority, please attach a copy of the judgement/decision, if available:

N/A.

Additional Annexes

- Annex Sa: Legal Assessment (Confidential Version)
- Annex Sb: Legal Assessment (Non-confidential Version)
- Annex 6: YLEISRADIO OY: TOIMINTASUUNNITELMA 2015 - tiivistelmä ja sisältöpainotukset[Yle's Action Plan 2015]
- Annex 7: Hallituksen esitys eduskunnalle Yleisradio Oy:sta annetun lain 7 §:n muuttamisesta [Government's Proposal to Parliament to amend Section 7 of the Act on Yleisradio Oy]

I hereby declare that all the information in this form and annexes is provided in good faith.

Place, date and signature of complainant"

Brussels, 23 April 2021



Prof. Dr. Damien Geradin

Geradin Partners