



## **PUBLIC VERSION**

**Case M1077/14**

**Proposed acquisition of Sky Italia and Sky Deutschland AG  
by British Sky Broadcasting Group plc**

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### **Decision**

**Document No: CICRA 14/44**

**August 2014**

**Jersey Competition Regulatory Authority**  
2<sup>nd</sup> Floor Salisbury House, 1-9 Union Street, St Helier, Jersey, JE2 3RF  
Tel 01534 514990, Fax 01534 514991 Web: [www.cicra.je](http://www.cicra.je)

## **The Notified Transaction**

1. On 7 August 2014, the JCRA received an application (the Application) for approval under Articles 20 and 21 of the *Competition (Jersey) Law 2005* (the **Law**) concerning the proposed acquisition by British Sky Broadcasting Group plc (**BSkyB**) (the **Purchaser**) of 100% of Sky Italia S.r.l (**Sky Italia**) and a 57.4% interest in Sky Deutschland AG (**Sky Deutschland**) (with the offer to acquire the remaining 42.6% interest held by third parties) (together and individually the **Targets**) from Twenty First Century Fox Inc. (**21<sup>st</sup> Century Fox**) (the **Seller**) (the **Acquisition**).
2. Under the Acquisition, BSKyB will acquire a 100% shareholding in Sky Italia and a 57.4% shareholding in Sky Deutschland (on a fully diluted basis). BSKyB will also make a voluntary cash takeover offer for the remaining 42.6% share capital (owned by a large number of smaller shareholders), a requirement under relevant German legislation. BSKyB's acquisition of the Seller's stake in Sky Deutschland will be conditional upon settlement of the Sky Deutschland public offer and BSKyB's acquisition of Sky Italia will in turn be conditional upon completion of the Sky Deutschland acquisition. According to the Application, the Parties aim to close all three deals at the same time.
3. The JCRA registered a notice of its receipt of the Application on its website on 7 August 2014, inviting comments by 21 August 2014. No submissions were received.
4. In 2011, the JCRA approved the proposed acquisition by News Corporation (now 21<sup>st</sup> Century Fox) of the remaining shares in BSKyB to obtain sole control of the BSKyB company, which would have bought the Targets and the Purchaser under common control, as is anticipated in this Acquisition.<sup>1</sup> In June 2011, News Corporation subsequently withdrew its offer following the News of the World newspaper phone hacking allegations. BSKyB has also previously submitted and obtained merger approval in Jersey (M622 – Virgin Media and M702 - The Clouds Network Limited).
5. In addition to Jersey, the Application states that the proposed Acquisition has been notified to several other competition regulatory bodies in other jurisdictions. In particular, on 6 August 2014 the proposed Acquisition was filed with the European

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<sup>1</sup> M694/11 JCRA Decision *News Corporation- BSKyB*. 04/02/11

Commission (**EC**) who requested a telephone call with the JCRA, which was held on 14 August 2014. Regulatory and merger clearances are also required from the following agencies: Italian Competition Authority, Italian Communications Authority; Austrian Competition Authority and German state media authorities in Bavaria, Hamburg and Schleswig-Holstein

6. On 7 August, the Parties advised that a public offer being made in Germany in connection with the Acquisition states that the JCRA decision will be received on or around 11 September, and that the broader transaction (including the German public offer) is conditional on receipt of the approval of the JCRA.

### **The Parties**

(a) *Purchaser*

7. According to the Application, BSkyB is a public company incorporated in England and Wales and its shares are listed on the London Stock Exchange. It is the holding company of a number of subsidiaries active in a variety of sectors in the United Kingdom (**UK**) and the Republic of Ireland (**ROI**) that for the purposes of the proposed Acquisition include the creation and supply of a variety of television (**TV**) channels for ultimate consumption by viewers in the UK, the ROI and the Channel Islands and the supply of packages of pay TV channels, including BSkyB's own channels. BSkyB is thus a vertically integrated company that is active at both the wholesale level and retail level. There is also a vertical relationship between BSkyB and Sky Italia for the provision of set-top boxes (**STBs**).
8. BSkyB retails audio visual services over direct-to-home (DTH) satellite to Jersey homes. According to the Parties, of approximately 23,721 households<sup>2</sup> in Jersey, [REDACTED] [50-60%] subscribe to BSkyB's DTH satellite services. BSkyB also provides [REDACTED] wi-fi hotspots<sup>3</sup> in Jersey, together generating £[REDACTED] per annum.

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<sup>2</sup> 2011 BSkyB internal analysis based on Ordnance Survey data. Note that the criteria for dwellings in the Jersey 2011 Census differs from the Ordnance Survey in that under the Census, the same physical space can be construed as more than one dwelling.

<sup>3</sup> [REDACTED].

9. For the year ending 30 June 2013, BSkyB's turnover was £7.2 billion and over 98% of this was generated in the UK (including Jersey) and the ROI. The Purchaser has minimal activities outside the UK and the ROI. The monies received and attributable to Jersey for the provision of DTH satellite services for the billing period to December 2013 was just over £[REDACTED]

10. Any reference to BSkyB includes reference to any of its subsidiaries and the companies it controls.

(b) *Seller*

11. In 2013, News Corporation demerged into two parts:

- 21<sup>st</sup> Century Fox retained News Corporation's broadcasting and film and services; and
- News Corporation's publishing assets transferred to a new entity: News Corp.

12. The Seller engages in direct broadcast satellite business through its wholly owned subsidiary Sky Italia and its majority owned subsidiary Sky Deutschland AG.

13. 21<sup>st</sup> Century Fox also owns a 39% interest in BSkyB (with voting rights capped at 37.19%) but this does not, according to the Application, confer *de facto* control over BSkyB. Moreover, the parties contend that the shareholding is not associated with any special right which would allow it to determine the Purchaser's strategic commercial behaviour and in particular the Seller does not have the right to appoint any director of BSkyB. Nor are there economic links or relations between BSkyB and 21<sup>st</sup> Century Fox sufficient to give the Seller control over the Purchaser on account of economic dependence.

14. According to the Application, based on attendance at the last five BSkyB shareholder meetings News Corporation/ 21st Century Fox did not have the *de facto* power to determine the Purchaser's commercial decisions as News Corporation/ 21st Century Fox

37.19% voting rights have not equated to a share of votes cast equal to or in excess of 50%.<sup>4</sup>

c) Targets

*Sky Italia*

15. The Target is an Italia media company. The Seller owns a 100% shareholding in Sky Italia that currently distributes more than 190 channels of basic, premium and pay-per-view programming services via satellite and broadband direct to subscribers in Italy. According to the Application, as of 30 June 2013, Sky Italia had 4.76 million subscribers.

16. For the year ending 30 June 2013, the Target's worldwide turnover was £[REDACTED], deriving the majority of its turnover from customers in Italy.

*Sky Deutschland*

17. The Target is a German media company listed on the Frankfurt Stock Exchange and controlled by the Seller. In January 2013, 21<sup>st</sup> Century Fox increased to 57.4% its ownership in Sky Deutschland. The Target is the leading pay TV operator in Germany and Austria, distributing more than 70 channels of channels of basic, premium and pay-per-view programming services via satellite and cable. As of 30 June 2013, Sky Deutschland has 3.45 million subscribers.

18. The Target's activities are predominately limited to Germany and Austria i.e. [REDACTED]% of its £[REDACTED] revenue relates to these two countries.

19. Neither of the Targets have turnover in Jersey.

**The Requirement for JCRA Approval**

20. According to Article 20(1) of the Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA. According to

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<sup>4</sup> Considerations, according to the Application, endorsed by the EC in the News Corp/BSkyB decision, 2010, COMP/M 5932, para 7-24. The EC concluded that News Corporation did not exercise sole control, whether de jure or de facto over BskyB.

Article 2(1)(b) of the Law, a merger or acquisition occurs for the purposes of the Law if a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.

21. The parties applied for JCRA approval of the Acquisition on the basis that the Purchaser has an existing share of supply of 40% or more of the supply DTH transmissions to households in Jersey, as a result of which the Acquisition falls within the conditions of Article 4 of the *Competition (Mergers and Acquisitions) (Jersey) Order 2010* (the **Order**).
22. Further, the parties also consider that due to the vertical relationship between BSkyB and Sky Italia for the provision of set top boxes, the proposed Acquisition is notifiable under Article 3 of the Order.
23. On the basis of these facts, pursuant to the Order and Article 20(1) of the Law, the JCRA's approval is required before the Acquisition is executed.

#### **Defining the Affected Relevant Market(s)**

24. “A relevant product market comprises all those products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the products' characteristics, their prices and their intended use.”<sup>5</sup> The relevant geographic market is essentially the area in which competition takes place.
25. The Application details that one or more of the Parties are active in i) *the licencing and acquisition of audio visual programming*, ii) *in the wholesale supply of TV channels (and related services)* and iii) *in the retailing of individual programming to consumers*. One or more of the Parties are also active in iv) *the sale of TV advertising airtime* and v) *the supply of STBs*.
26. According to the Application, the only overlaps in the relevant geographic markets arise as a result of BSkyB's minimal activities in Austria, Germany and Italy. BSkyB

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<sup>5</sup> European Commission Notice on the definition of the relevant product market for the purposes of Community competition law, O.J. C 372 at 2 (9 December 1997).

manufactures set top boxes (STBs), the majority of which are distributed to BSkyB's retail subscribers in the UK (including Jersey) and the ROI, either directly or via an independent authorised engineer. However, as the Targets are not active in the provision of STBs there is no horizontal overlap but during 2013, BSkyB supplied [REDACTED] STBs to Sky Italia (the Purchaser currently does not supply STBs to any other pay TV retailer) and so there is a vertical relationship between the Purchaser and one of the Targets. According to the Application none of the STBs provided to Sky Italia are used in Jersey and the JCRA has therefore concluded this vertical relationship is not material.

27. For the purposes of this Decision, it is not necessary to define the relevant product and geographic markets as there is no vertical relationship and no horizontal overlap between the activities of the Parties in Jersey and therefore the proposed Acquisition does not raise any competition concerns irrespective of the definition of the relevant markets.

### **Effect on Competition**

28. According to the Application, there is no vertical relationship or horizontal overlap between the activities of the Parties in Jersey. The JCRA's investigation has provided no reason to doubt this statement. Nor has the JCRA identified any other potential competition concerns arising from the proposed Acquisition.

29. In the absence of either a horizontal overlap between the activities of the parties or a vertical relationship between the parties in Jersey, the JCRA concludes that the proposed Acquisition will not result in a substantial lessening of competition in Jersey or any part of Jersey.

### **Conclusion**

30. Based on the preceding analysis, the JCRA approves the Acquisition under Article 22(1) of the Law.

**26 August 2014**

**By Order of the JCRA Board**