



Case M1282J

Proposed Acquisition of  
Sky Plc by  
Twenty-First Century Fox Inc

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Decision

**Document No: CICRA 17/06**

**Date: 10 April 2017**

**Jersey Competition Regulatory Authority**  
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## Summary

1. This Decision concerns the proposed acquisition by Twenty-First Century Fox, Inc (**21CF**) of sole control over Sky Plc (**Sky**). The transaction has been notified to the Jersey Competition Regulatory Authority (**JCRA**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **Law**).
2. The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market in Jersey and hereby approves the acquisition by 21CF.

## The Notified Transaction

3. On 3 March 2017, the JCRA received an application for approval from 21CF (the **Purchaser**) for its proposed acquisition of sole control of Sky Plc (the **Target**). 21CF is presently the largest shareholder in Sky, but does not control Sky for the purposes of the Competition (Jersey) Law 2005 (the **Law**). 21CF now proposes to acquire all the share capital of Sky that it and its affiliates do not already own, by means of a public offer envisaged to be implemented as a court-approved scheme of arrangement under English company law. Following implementation of the transaction, 21CF will hold 100% of the shares and voting rights in Sky.
4. The JCRA registered the application on its website on 3 March, with a deadline for comments of 17 March 2017. No submissions were received.

## The Parties

5. Sky (formerly known as British Sky Broadcasting Group Plc or BSkyB) is a UK public company whose shares are listed on the London Stock Exchange. No entity exercises control over Sky for the purposes of the Law, whether sole or joint. Sky is the holding company of a number of subsidiaries active in a variety of sectors in the UK, Ireland, Germany, Austria and Italy.
6. 21CF is a Delaware corporation whose shares are listed and traded on the NASDAQ Global Select Market. No entity exercises control over 21CF for the purposes of the Law, whether sole or joint. It is a diversified global media company with operations in three industry segments: cable network programming, television and filmed entertainment.

## Requirement for JCRA approval

7. Under Article 2(1)(b) of the Law, a merger<sup>1</sup> occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.
8. On completion of the notified transaction, 21CF will acquire 100% of the share capital of Sky that it does not already own. The transaction therefore constitutes a merger as defined by the Law.
9. 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. Article 4 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that if one or more of the

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<sup>1</sup> For brevity, mergers and acquisitions are referred to as 'mergers' in this Decision

parties to the proposed merger has an existing share of 40% or more of the of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, then the merger must be notified to the JCRA under Article 20(1) of the Law<sup>2</sup>.

10. Sky retails audio-visual services to Jersey over 'direct to home' (DTH) satellite. Approximately 82% of households in Jersey subscribe to these services. In addition, a wide range of additional pay and free-to-air (FTA) TV channels are available over its DTH satellite platform to homes in Jersey.
11. On the basis of this information submitted by the parties to the transaction, the JCRA has concluded that, by law, the transaction requires the approval of the JCRA prior to its execution.

### **Market Definition**

12. Under Article 22(4) of the Law, the JCRA must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. To this end, the JCRA will identify the markets which are likely to be affected by the merger and then assess whether competition in these markets will be substantially lessened. The relevant markets are identified in this section; the impact on competition is assessed in the next.
13. The relevant product market is defined primarily by reference to the likely response of consumers and competitors<sup>3</sup>. It will comprise products and/or services which are regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An undertaking cannot have a significant impact on the prevailing conditions of a market if customers can switch easily to other service providers.
14. The Parties have submitted that the relevant markets for the purposes of considering whether the proposed transaction results in a substantial lessening of competition are:
  - a) Supply of audio-visual content on a national basis
  - b) Wholesale supply of TV channels on a national basis
  - c) Retail provision of audio-visual services on a national basis
15. The Parties have further submitted, consistent with previous European Commission Decisions, that the geographic market for the supply of audio-visual content is national or regional (based on linguistically-homogenous areas), on the basis that:
  - a. Right holders typically license their content to broadcasters on a country-by-country basis
  - b. Different primary languages are spoken in each of the relevant countries
  - c. Consumers have different tastes in each of the relevant countries

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<sup>2</sup> Note: the share of supply test is not an economic assessment of the type used in the substantive assessment below. Therefore, the group of goods or services to which the jurisdictional test is applied does not necessarily amount to a relevant economic market. CICRA will have regard to any reasonable description of goods or services to determine whether the share of supply jurisdictional test is met.

<sup>3</sup> CICRA Guideline 7 – Market Definition

16. The JCRA notes that the definition proposed by the Parties is consistent with previous European cases, however in this case, the precise product and geographic market can be left open since the transaction will not give rise to a substantial lessening of competition in Jersey on the basis of any reasonable market definition considered.

### Effect on Competition

21CF

17. [REDACTED]

18. For completeness, the following table summarises 21CF activities in the UK and notes the relevance of these to Jersey:

Level of Supply Chain	Description of Activities
<b>Supply of audio-visual TV content</b>	<ul style="list-style-type: none"> <li>Active through 20<sup>th</sup> Century Fox (film content and other TV content), and Endemol Shine (other TV content) in the supply of audio-visual content</li> <li>Distributes certain series through FNG</li> <li>Supplies a small amount of sports content</li> <li>Supplies FTA broadcasters, pay-TV broadcasters and OTT providers</li> </ul> <p>21CF [REDACTED] content sales to broadcasters in Jersey. However, distribution rights granted to UK broadcasters commonly relate to a region including Jersey, so content made available to customers at the retail level in the UK is also often available to retail customers in Jersey.</p>
<b>Wholesale supply of TV channels</b>	<ul style="list-style-type: none"> <li>FNG produces channels (FOX, National Geographic, Nat Geo Wild, YourTV, BabyTV, Star Plus, Star Utsav, Star Gold, Star Life OK, Fox News Channel) which it then supplies to downstream broadcasters (Sky, Virgin Media, Talk Talk, BT TV)</li> <li>21CF also owns Star TV, which distributes a number of special-interest channels targeted at the South Asian community</li> </ul> <p>Whilst the supply takes place to broadcasters in the UK, these channels are also available to audiences in Jersey.</p>
<b>Retail supply of audio-visual services</b>	<ul style="list-style-type: none"> <li>FNG broadcasts one FTA channel, Your TV. Your TV was launched in September 2015 [REDACTED].</li> </ul> <p>Your TV is available to audiences in the UK and Jersey.</p>

Sky

19. During the last two financial years, the only revenue generated by Sky which was directly attributable to Jersey related to the wholesale supply of TV channels to Newtel and the retail supply of audio-visual services over DTH satellite to residential subscribers in Jersey. These revenues amounted to:

- Year ended 30 June 2015: [redacted]
- Year ended 30 June 2016: [redacted]

20. An overview of Sky's activities in the UK and Jersey is set out in the table below:

Level of Supply Chain	Description of Activities
<b>Supply of audio-visual TV content</b>	<ul style="list-style-type: none"> <li>• Very limited activities in the supply of audio-visual content through its distribution arm, Sky Vision. Sky Vision is only active in the supply of other TV content</li> <li>• Sky also licenses some limited sport content</li> </ul> <p>Sky makes no direct content sales to broadcasters in Jersey. However, distribution rights granted to UK broadcasters commonly relate to a region including Jersey, so content made available to customers at the retail level in the UK is also often available to retail customers in Jersey.</p>
<b>Wholesale supply of TV channels</b>	<ul style="list-style-type: none"> <li>• Sky creates and supplies channels (Challenge, Pick, Sky 1, Sky 2, Sky Living, Sky Atlantic, Sky Arts, Sky Intro, Sky Cinema channels, Sky News, Sky Sports channels, (1-5, Box Office, F1, Mix, Sports News HQ) to operators active at the retail level of the audio-visual value chain for distribution to end customers. Sky's wholesale customers for these channels are [redacted].</li> <li>• [redacted]</li> </ul> <p>Sky's channels are made available to retail providers in the UK. Publicly available information suggests that none of the other UK retailers of audio-visual services which carry Sky channels are active in Jersey ([redacted]). However, Sky supplies channels to [redacted], a Jersey based provider of retail cable services. Sky's channels are therefore made available to audiences in Jersey [redacted].</p>
<b>Retail supply of audio-visual services</b>	<ul style="list-style-type: none"> <li>• Retailers its own and third party linear pay-TV channels and VOD programming via DTH satellite, OTT, and mobile technologies to end customers.</li> <li>• Broadcasts a limited number of FTA channels: Sky News International (available across much of Europe), Sky News, Sky News Arabia, Challenge, Pick and the Sky Intro channel).</li> </ul> <p>Specifically in terms of Jersey, Sky retails audio-visual services over DTH satellite direct to Jersey homes.</p>

## Conclusion

21. On the basis of the information available and provided by the notifying parties, the JCRA concludes that 21CF is not, and is not likely to become, active on any relevant market in Jersey. It follows that the effect on competition, if any, of this proposed merger will occur wholly outside of Jersey and so the JCRA finds that the proposed merger will not lessen competition substantially in Jersey.

**Decision**

22. Based on the preceding analysis, the JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

**10 April 2017**

**By Order of the JCRA Board**