CICRA

CHANNEL ISLANDS COMPETITION & REGULATORY AUTHORITIES

Case M1339J

Proposed Acquisition of Scripps Networks Interactive Inc. by Discovery Communications Inc.

Decision

Document No: CICRA 18/03 **Date: 24 January 2018**

Jersey Competition Regulatory Authority
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Summary

1. This Decision concerns the proposed acquisition by Discovery Communications Inc. (Discovery) of Scripps Networks Interactive Inc. (Scripps).

2. The transaction has been notified to the Jersey Competition Regulatory Authority (**JCRA**) for approval under article 21 of the *Competition (Jersey) Law 2005* (the **Law**).

3. The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market in Jersey and therefore approves the acquisition in accordance with article 22 of the Law.

The Parties

4. The purchaser is Discovery Communications, Inc. (**Discovery**), 850 Third Avenue, New York, NY 10022, USA.

5. The target is Scripps Networks Interactive Inc. (**Scripps**), 9721 Sherrill Blvd, Knoxville, TN 37932, USA.

6. Both parties are active in the area of motion picture, video and television programme activities, for the supply of TV programming and content for distribution via a range of platforms including "Free to Air", pay TV and digital distribution, wholesale supply of basic TV channels to pay TV service providers.

The Notified Transaction

7. On 18 December 2018 the JCRA received a joint application from Discovery and Scripps for the proposed acquisition. As a result of the transaction, Discovery will acquire the share capital and direct control of Scripps, which will become a subsidiary within the Discovery group structure.

8. The JCRA registered the application on its website on 18 December, with a deadline for comments of 4 January. No submissions were received in response to the notification.

Requirement for JCRA approval

9. Under Article 20(1) of the Law, certain mergers or acquisitions require the approval of the JCRA. The relevant thresholds are set out in the *Competition (Mergers and Acquisitions) (Jersey) Order 2010* (the **Order**).

10. Article 2, of the Order provides that if one a merger or acquisition would "*create an undertaking with a share of 25% or more in the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey*"

11. The parties have indicated that the two parties overlap in the provision of basic pay TV content (channels/programming) to the wholesale market. After the transaction, the combined entity will have a share of supply in excess of 25% for the supply of basic (non-premium) TV channels to

pay TV service providers for Jersey based on consumer viewing surveys. On this basis the transaction is one which requires the approval of the JCRA prior to its execution.

12. The parties have applied to the European Commission for approval of the transaction and further details of the application can be found on the website[1].

Market Definition

13. In accordance with 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 will be affected by the merger and then assess whether there will be any significant lessening of competition in these markets.

14. The relevant product market is defined primarily by reference to the likely response of consumers and competitors[2]. 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. It is generally considered that parties cannot have significant market power in circumstances where their combined market share would be less than 25%.

15. The parties' products are broadcast or provided to consumers by retail platforms such as satellite, cable or "on demand" (internet) TV network operators and distributors. They do not rely on local advertising revenue or broadcast or sell (TV) service subscriptions or advertising space to wholesale or retail customers in Jersey.

16. The parties consider that the relevant product market is the market for the supply of wholesale TV services and that the relevant geographic market is Jersey.

17. The parties conclude that the businesses have a combined revenue share of the market for wholesale supply of basic pay TV of [5-10%], approximately [✂] in a market worth circa €4,300m (2016 figures).

18. Based on the information provided by the parties, the JCRA accepts their view of the relevant product market. It does not agree that there is a separate market for the wholesale supply of services to Jersey distinct from that to the UK and Channels Islands as a whole.

19. However, in this case it is not necessary to precisely determine the market definitions since the transaction will not give rise to a significant lessening of competition in Jersey on the basis of any reasonable market definition considered.

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[1] Detail may be found here, on the European Commission website, case reference M8665: http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=2_M_8665

[2] CICRA Guideline 7 – Market Definition

Market Share & Effect on Competition

20. In this case, the parties have indicated that their combined market share in any of the affected markets will not exceed the level of 25% below which it is reasonable to assume, in the absence of evidence to the contrary, that there is no significant impact on competition. This is consistent with previous practice and merger guidelines[3].

21. It should be noted that the definition and determination of market share in the relevant markets is different to the "share of supply" used to determine whether approval is required. While the parties have previously indicated that their share of supply of certain wholesale products will exceed 25%, based on consumer viewing figures, and this represents a subset of products in a broader market for the provision of pay TV channels and content. The parties have indicated that their overall market share in the market for wholesale provision of programming/programme content for the UK and Channel Islands market is approximately [5-10%] by turnover.

Conclusion

22. On the basis of the information provided in the parties Merger Application Form, the JCRA accepts that the market shares identified by the parties are less than 25% in the relevant markets and that there is no evidence of a significant lessening of competition in any market in Jersey.

23. The merger is not expected to lead to a substantial lessening of competition on any market in Jersey.

Decision

24. The JCRA hereby approves the proposed acquisition under Article 22(1) of the Law.

17 January 2018 **By Order of the JCRA Board**

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[3] COUNCIL REGULATION (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)