



Case M1458J

Proposed acquisition of UKTV Media Ltd by BBC Studios
Distribution Ltd

Decision

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1. SUMMARY

1.1 UKTV Ltd is a joint venture owned by BBC Studios and Discovery. The joint venture parties are now seeking to terminate the joint venture and allocate the existing television channels operated by UKTV between BBC Studios and Discovery. This will be achieved by two linked transactions. The assets associated with three of the existing channels will transfer to full ownership of Discovery, and the remainder of UKTV will come under full ownership of BBC Studios.

1.2 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 **2005 Law**).

1.3 The JCRA has determined that the proposed acquisition will not lead to a substantial lessening of competition in any relevant market and hereby approves the notified transaction.

2. THE NOTIFIED TRANSACTION

2.1 On 9 April 2019, the Channel Islands Competition and Regulatory Authorities¹ (CICRA) received an application from BBC Studios Ltd for the proposed change in control of that part of UKTV Ltd which is not being transferred to Discovery.

2.2 The parties are now seeking to terminate the UKTV joint venture and allocate the ten existing television channels operated by UKTV between BBC Studios and Discovery. This will be achieved by two linked transactions:

(a) The assets associated with three of the existing UKTV channels (the **Life Channels**) will transfer to full ownership of Discovery (the **Discovery Transaction**).

(b) The remainder of UKTV (**Entco**) will come under full ownership of BBC Studios (the **Transaction**), meaning that BBC Studios will move from having joint to sole control of a 'smaller' UKTV.

2.3 CICRA registered the application on its website with a deadline for comments of 25 April 2019. No submissions were received.

3. THE PARTIES

3.1 BBC Studios Distribution Limited (**BBC Studios**) is registered in England and Wales, registered number 01420028. It is a wholly owned subsidiary within the BBC Commercial Holdings Limited group. BBC Commercial Holdings Limited is the main commercial arm and a wholly owned subsidiary of the British Broadcasting Corporation (**BBC**).

¹ The JCRA and GCRA co-ordinate their activities with respect to competition law enforcement in the Channel Islands. For the purposes of this document, the JCRA and GCRA are together referred to as CICRA, and all references to CICRA should therefore be read as references to each of the JCRA and GCRA unless the context otherwise requires.

3.2 BBC Studios is the primary supplier of the BBC's commercial production and distribution business in the UK and around the world. It is active in the production and financing of TV content, the commercialisation of content, the franchising of successful programme formats internationally, the provision of TV channels internationally, the provision of Video-on-demand, and merchandising, live events and the production and sale of DVDs, books and audio content linked primarily to BBC public service content.

3.3 UKTV Limited (**UKTV**) is registered in England and Wales, registered number 04266373. It is a 50/50 joint venture which is ultimately owned by BBC Studios and Discovery Inc. Discovery Inc. is a Delaware corporation.

3.4 UKTV is a commercial broadcaster which broadcasts a number of linear channels (i.e. those broadcast by reference to a pre-determined schedule) on Freeview, Youview, Freesat, Sky, Virgin, BT, Talk Talk and other platforms in the UK and Channel Islands.

4. JERSEY: REQUIREMENT FOR JCRA APPROVAL

4.1 Under Article 2(1)(b) of the 2005 Law, a merger² occurs where a person who controls an undertaking acquires direct or indirect control of the whole or part of another undertaking.

4.2 A reduction in the number of controlling shareholders constitutes a change in the quality of control and is considered to be a merger if the exit of one of more controlling shareholders results in a change from joint to sole control. Decisive influence exercised alone is different from decisive influence exercised jointly as, where there is joint control, the shareholders will have to take into account potentially different interests of the other party or parties involved³.

4.3 On completion of the notified transaction, the quality of BBC Studios control of Entco will change from joint to sole control. The notified transaction therefore constitutes a merger as defined by the 2005 Law.

4.4 According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except with and in accordance with the approval of the JCRA.

4.5 Article 2 of the Competition (Mergers and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that the merger must be notified to the JCRA for approval under Article 20(1) of the 2005 Law if:

- (a) one or more of the undertakings in the proposed merger has an existing share of 25% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey; and,

² For brevity, mergers and acquisitions are referred to as 'mergers' in this document.

³ Commission Consolidated Jurisdictional Notice under Council Regulation (EC) 139/2004, para 89 – 90

- (b) another undertaking involved in the proposed merger is active in the supply or purchase of goods or services of any description that are upstream or downstream of those goods or services in which that 25% share is held

4.6 According to information provided by BBC Studios, it has a share of supply of more than 25% of the licensing and distribution of BBC public service content in the UK and, by extension, the Channel Islands. UKTV is active in the downstream linear broadcasting markets and acquires content from BBC Studios on an arm's length basis. The notified transaction therefore requires the approval of the JCRA prior to its execution.

5. MARKET DEFINITION

5.1 Under Article 22(4) of the 2005 Law, the JCRA must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. To this end, CICRA will identify the markets which are likely to be affected by the merger and then assess whether competition in these markets will be substantially lessened⁴.

Views of the Parties

5.2 For the purposes of assessing the competition effects of the merger, BBC Studios have proposed the following market definition:

Product Market

5.3 The markets in which UKTV is currently active and in which EntCo will continue to be active going forward are:

- (i) Linear broadcasting and the supply of video-on-demand (VOD)
- (ii) Content acquisition
- (iii) Advertising

Geographic Market

5.4 BBC Studios consider that the relevant geographic market is the UK and Channel Islands, which are linguistically homogenous areas and reflect the primary geographic market in which EntCo will be active.

CICRA Consideration

5.5 The relevant product market is defined primarily by reference to the likely response of consumers and competitors⁵. It will comprise products and/or services which have regarded as interchangeable or substitutable by the consumer, by reason of the product's characteristics, prices and intended use. An

⁴ In many cases, a market may already have been investigated and defined by CICRA or another competition authority. CICRA may take note of market definitions applied by other competition authorities, although these are not precedents. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.

⁵ CICRA Guideline 7 – Market Definition

undertaking cannot have a significant impact on the prevailing conditions of a market if customers can easily switch to other service providers.

5.6 In many cases, a market may already have been investigated or defined by CICRA or another competition authority. CICRA may take note of market definitions adopted in European competition law cases; however may depart from that decision where justified by circumstances specific to the Channel Islands. Sometimes earlier definitions can provide useful short cuts, but competitive conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts.

5.7 The market definitions proposed by the parties are in line with those previously adopted by the European Commission.⁶ CICRA considers the Commission definitions are a reasonable frame of reference within which to assess this transaction. However reaching a definitive conclusion on the scope of the relevant market is not necessary because CICRA concludes that on the balance of probabilities, the transaction will not give rise to a substantial lessening of competition on any reasonable basis.

6. EFFECT ON COMPETITION

Vertical effects

6.1 Vertical mergers are mergers where one party has a 'vertical' relationship with the other (for example, as a supply to or customer of that party). The focus of control of these types of merger is on the ability and incentive to foreclose an actual or potential competitors' access to supplies or markets as a result of the merger and whether such a strategy would have a significant detrimental effect on competition either up or downstream. The focus will be on whether, post transaction, competitors will have sufficient access to alternative suppliers or outlets.

6.2 It is relevant to note that this transaction only relates to a change in the quality of control exercised by BBC Studios over UKTV / Entco. BBC Studios can currently block strategic decisions of UKTV; the issue is therefore whether the change in the quality of BBC Studios' control of UKTV / Entco makes anti-competitive vertical foreclosure more likely to occur.

Linear Broadcasting and supply of VOD

6.3 UKTV channels are available in the UK and Channel Islands through platforms such as Freeview, Yourview and Sky. There is no Channel Island specific market information available, however based on UK SOCI⁷ ratings, the relevant UKTV channels have [less than 5%] market share. The European

⁶ See, for example, Case No COMP/M.7000 Liberty Global / Ziggo, COMP/M.8354 Fox / Sky

⁷ SOCI measures the 'share of commercial impacts' which is used to measure a broadcaster's share of the commercial TV audience. As this focuses on UK TV channels which carry adverts, this will exclude the BBC public service channels such as BBC One.

Commission has previously recognised that none of the UKTV channels are ‘must have’ channels for those TV distributors wishing to operate in the UK market⁸.

6.4 Given the presence of other significant distributors in this segment, such as ITV, Channel 4, Channel 5, Netflix and Amazon, and UKTV’s likely low share of this segment, which will not change as a result of the transaction, the transaction is not expected to lead to anti-competitive vertical foreclosure in respect of the linear broadcasting and supply of VOD.

Content Acquisition

6.5 UKTV does not currently purchase any content from Jersey based producers. The analysis provided therefore relates to UKTV’s position in the UK and global markets.

6.6 According to publicly available information, and taking account of the global nature of this market, UKTV’s top five competitors in this market are as follows:

Competitor	Market Share 2018
ITV	£105M Acquisitions £763M Original Programming
Channel 4	£125M Acquisitions £535M Original Programming
Channel 5	£28M Acquisitions £130M Original Programming
Netflix	\$13B Content (Global)
Amazon	\$5B Content (Global)
<i>UKTV</i>	<i>£70M Acquisitions</i>

6.7 BBC Studios is active in both the production of original content and the sale of pre-produced content in the UK as well as internationally. UKTV has traditionally acquired a significant percentage of its content from BBC Studios and it is anticipated that Entco will continue to do so post-acquisition. This licensing arrangement is negotiated on an arm’s length basis, and represents only a relatively small proportion of BBC Studios total archive [0 - 10%].

6.8 BBC Studios will continue to make pre-produced content available to UKTV and others, and the transaction will not result in any entity increasing its share of content acquisition.

6.9 The transaction is therefore not expected to lead to any lessening of competition in this market segment.

⁸ Case M8665 – Discovery Scripps, 6 February 2018, para 67-70

Advertising

6.10 BBC Studios estimates that on the basis of a narrow view of the market of TV advertising in the UK and Channel Islands, is broadly in line with its SOCI, which was [0 - 10%] in 2018. The transaction will not result in any entity increasing its market share in terms of advertising.

6.11 UKTV's top five competitors in this market are as follows:

Competitor	Market Share 2018 SOCI
ITV	[20-30%]
Channel 4	[10-20%]
Channel 5	[0-10%]
Sky	[0-10%]
Discovery	[0-10%]
UKTV	[0-10%]

6.12 Given that the only change is in the quality of control exercised by BBC Studios, and that the transaction does not result in an increase in market share, and given the relative scale of UKTV's competitors in these markets, it is unlikely that there will be a substantial lessening of competition as a result of this transaction.

7. DECISION

7.1 On the basis of the analysis above, the change in quality of control of Entco will not affect the competitive strength of BBC Studios in Jersey through increasing its share of any relevant market in Jersey. The merger will therefore not substantially lessen competition in Jersey or any part of Jersey.

7.2 The merger is therefore approved under Article 22(1) of the 2005 Law.

02 May 2019

By Order of the Board of the JCRA