



Decision

Proposed acquisition of Freesat by Digital UK Limited (C-025)

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Jersey Competition Regulatory Authority
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1. Summary

1.1 Digital UK Limited (**DUK**) proposes to acquire the entire issued share capital of Freesat (UK) Limited (**Freesat**) via DUK's wholly owned subsidiary, Digital UK Trading Limited (**Digital Trading**). The proposed transaction has been notified to the Jersey Competition Regulatory Authority (the **Authority**) for approval pursuant to Article 21 of the Competition (Jersey) Law 2005 (the **2005 Law**).

1.2 The Authority has determined that the proposed transaction 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 14 May 2021, the Authority received an application from DUK for the proposed acquisition of the entire issued share capital of Freesat.

2.2 Currently, the BBC, ITV and Channel 4 each has negative joint control¹ over DUK which will not change as a result of the Transaction. The BBC and ITV also have negative joint control over Freesat. Therefore, as a result of the transaction:

- DUK will acquire direct sole control over Freesat;
- The BBC and ITV will continue to hold negative joint control over Freesat (with Channel 4) via the existing control structure of DUK; and
- Channel 4 will acquire negative joint control over the Freesat operation through its existing position in the control structure of DUK

2.3 The Authority registered the application on its website with a deadline for comments of 28 May 2021. No submissions were received. The clock was stopped on the assessment for 4 days as further information was required to complete the assessment.

3. The Parties

DUK (the Purchaser)

3.1 For the purposes of this Decision, references to the Purchaser are to Digital UK Limited (**DUK**), notwithstanding that the proposed share acquisition is by Digital Trading. DUK is a limited company incorporated in England and Wales (company number 05422613). DUK is a joint venture

¹ Negative joint control occurs where minority shareholders hold decisive influence, for example through the exercise of veto rights in relation to key strategic matters. This may occur where two or more undertakings are able to exercise decisive influence jointly and therefore share control.

between the BBC, ITV and Channel Four Television Corporation, each of which directly or indirectly exercises joint control over DUK.

3.2 DUK is a full function joint venture² which was formed in 2005 to facilitate the Digital Switch Over (the **DSO**). The company was refocused in 2013 to operate on a lasting basis. It has a market-facing presence, contracts in its own name with third parties and holds Ofcom regulated Electronic Programme Guide (**EPG**) licences associated with Freeview services.

3.3 Currently the BBC, ITV and Channel 4 each has negative joint control over DUK. Each of them has veto rights over key strategic decisions and can therefore determine and control the strategic direction of DUK. This will not change as a result of the transaction.

3.4 The British Broadcasting Corporation (**BBC**) is established by British Royal Charter (company number RC000057). ITV Broadcasting Limited (**ITV**) is incorporated in England and Wales (company number 00955957). The Channel Four Television Corporation (**Channel 4**) is incorporated in England and Wales (company number 01533774).

Freesat (the Target)

3.5 Freesat (UK) Limited (Freesat) is incorporated in England and Wales (Company number 06250097). Freesat and is a joint venture between the BBC and ITV, each of which directly or indirectly exercises joint control over DUK. Like DUK, Freesat operates on a lasting basis. Freesat was created to ensure that UK viewers unable to receive DTT could access Free To View (FTV) television via satellite.

4. Requirement for Authority Approval

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

4.2 On completion of the Notified Transaction, DUK will acquire the entire share capital of Freesat and, as a result, direct control of Freesat. Channel 4 will therefore acquire indirect control of

² A joint venture will generally be full function where it has sufficient resources to operate independently on a market, performing all the functions normally carried out by undertakings operating in the same market, with its own management and access to resources such as staff, assets and finance; and there is a lasting change in the structure of the undertakings concerned.

Freesat through its control of DUK. There is no change to the control held by the BBC and ITV which will continue to hold indirect control of both DUK and Freesat under the new structure.

4.3 The Notified Transaction therefore constitutes a merger as defined in the 2005 Law in relation to the acquisition by Channel 4 of indirect control of Freesat.

4.4 According to Article 20(1) of the 2005 Law, a person must not execute certain mergers or acquisitions except and in accordance with the approval of the Authority. In particular, in relation to this transaction, Article 4 of the Order provides that where one or more of the parties to the proposed merger has an existing share of 40% or more of the supply or purchase of goods or services of any description supplied to or purchased from persons in Jersey, and if neither of the two exceptions apply, then the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law.

4.5 Article 4 of the Order is satisfied as DUK is estimated to facilitate the provision by third parties of the primary source of TV in at least 40% of homes in Jersey. Therefore, in accordance with Article 20(1) of the 2005 Law, the approval of the Authority is required prior to the completion of the Notified Transaction.

5. Market Definition and Effect on Competition

5.1 Under Article 22(4) of the 2005 Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. As an initial step, the Authority will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed.

5.2 When defining a market, the Authority may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. These previous decisions are not precedents and are not binding, either on the merging parties or on the Authority. Competition conditions may change over time, changing the market definition, and market definition will always depend on the prevailing facts.³

Views of the Parties

5.3 The Parties propose that the relevant change in control is the acquisition of control is the acquisition by Channel 4 of joint control of Freesat because the activities of DUK and Freesat are

³ This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82. Article 60 of the 2005 Law requires the Authority to attempt to ensure that so far as possible questions arising in relation to competition are dealt with in a manner that is consistent with the treatment of corresponding questions arising under European Union law in relation to competition within the European Union.

already under the common control of the BBC and ITV, and Channel 4 already has existing joint control over DUK.

Product Market

5.4 The role of both DUK and Freesat is to facilitate interoperability / interconnection for receipt by televisions and other devices of FTV television signals which are broadcast on an unencrypted basis in the UK by broadcasters such as the BBC, ITV, Channel 4 and others. DUK does this via the DTT network; Freesat does this via satellite. Both also facilitate the provision of additional services (such as Freeview Play in DUK's case) via the internet.

5.5 The Parties maintain there is no precedent for a market definition of 'facilitating the receipt of TV signals' and they do not consider this to be an appropriate way of assessing the competition effects of the Transaction.

5.6 Instead, the Parties view their services as part of the market for the retail supply of TV services more widely, and suggest that this is the relevant product market for assessing the competitive effect of the transaction on end users. This is because they enable viewers to receive signals broadcast by third party broadcasters and play a part in the wider public service broadcasting infrastructure in the UK and Channel Islands.

5.7 However, the Parties acknowledge that their services do not fit into the traditional definition of the market because they are only responsible for facilitating the receipt of underlying broadcasts, neither has any control over the signals broadcast over the DTT network, satellite or IP delivery, and neither plays any role in TV content creation.

5.8 The Parties therefore propose that the Authority may leave the precise definition of the relevant product market open since the Transaction will not substantially lessen competition in Jersey on any reasonable basis.

Geographic Market

5.9 The geographic market for retail TV services has generally been held to be national in scope (in this case, including the UK and Channel Islands), or at most, covering a linguistically homogenous region within Europe (such as the UK and Ireland). For the purposes of the Transaction, the Parties consider that the appropriate geographic market is the UK, Channel Islands and Isle of Man.

Authority Consideration

5.10 The Authority notes the Decision of the European Commission of 3 May 2021 to approve this Transaction under Article 6(1)(b) of the EU Merger Regulation⁴ (the **Commission Decision**).

5.11 The Commission Decision describes the business activities of the undertakings as:

- BBC: public sector broadcaster providing a wide range of TV and radio channels as well as iPlayer and other on-demand services which are accessible to licence fee payers throughout the UK through a variety of platforms and devices.
- ITV: integrated producer broadcaster, creates, owns and distributes high-quality content on multiple platforms globally. It broadcasts a large portfolio of commercial channels including the main ITV channel
- Channel 4: publicly-owned and commercially-funded UK public service broadcaster which operates a portfolio of channels accessible on a free to view basis via a variety of platforms and devices
- Freesat: joint venture between the BBC and ITV which provides a satellite broadcasting platform to c. 1.1 million homes (free to view linear TV and on demand content over satellite, as well as paid for on demand content). It also provides technical and consultancy support to a small number of international customers to whom it licenses certain technology and knowhow associated with free to view TV services.

5.12 The European Commission concluded that the transaction does not raise any competition concerns since there are no horizontal nor vertical overlaps between the activities of Channel 4 and Freesat. The transaction was considered under the simplified procedure.

5.13 There is no reason to consider that there would be a different effect on competition in Jersey to that in Europe and the UK given the geographic scope of the activities of the Parties to the Transaction.

5.14 Given that the only change is in the acquisition of joint control of Freesat by Channel 4, and on the basis of the Commission Decision to clear the Transaction on the basis that there are no horizontal or vertical overlaps between their activities, there are no competition concerns arising from this Transaction.

⁴ https://ec.europa.eu/competition/mergers/cases1/202120/m10187_126_3.pdf

6. Decision

6.1 On this basis, the Authority concludes that the change in control of Freesat will not substantially lessen competition in Jersey or any part of Jersey; and the merger is therefore approved under Article 22(1) of the 2005 Law.

21 June 2021

By Order of the Jersey Competition Regulatory Authority