Decision

Proposed transaction to establish a joint venture: Sky UK Limited and Paramount Pictures International Limited (C-031)

Document No: JCRA 21/54 Date: 08 December 2021

Jersey Competition Regulatory Authority
2nd Floor Salisbury House, 1-9 Union Street,
St Helier,
Jersey, JE2 3RF
Tel 01534 514990
Web: www.jcra.je

1. Summary

1.1 Sky UK Limited (**Sky**) and Paramount Pictures International Limited (**Paramount**) propose to establish a joint venture for the retail provision of audio-visual services which will also distribute certain parent companies' channels in a number of jurisdictions in Europe (excluding Jersey and the UK). 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 28 October 2021, the Authority received an application from Sky and Paramount for the proposed joint venture.

2.2 The Proposed Transaction involves the creation of a new full-function joint venture between Sky and Paramount. This will operate a subscription video-on-demand streaming service comprising audio-visual content distributed direct to consumers on an over the top basis (i.e. delivered via the internet) and via third party platforms and connected devices. This service will be offered in selected European countries, both within and outside the European Economic Area (**EEA**) but excluding, for the avoidance of doubt, Jersey and the UK.

2.3 The Authority registered the application on its website on 19 November 2021 with a deadline for comments of 3 December 2021. No submissions were received.

3. The Parties

3.1 Sky UK Limited (Sky) is the (indirect) holding company of a number of subsidiaries carrying on business in the entertainment and communications sectors in Europe. Its primary activities include: the production, supply, licensing and acquisition of audio-visual content, the wholesale acquisition and supply of TV channels, the supply of audio-visual services to subscribers, the provision of technical platform services to broadcasters on Sky's DTH platforms, and the supply and onward sale of advertising. It is registered in England and Wales (company number 02906991) and is wholly owned by Comcast Corporation, a US-based, global media, technology and entertainment company.

3.2 Paramount is a limited company incorporated in England and Wales (company number 03458440). It is active in the fields of television entertainment (Paramount+), cable networks and filmed entertainment (Paramount Pictures, Paramount Players, Paramount Animation and Paramount Television Studios). It is fully owned by ViacomCBS, a US listed global media and entertainment company, who have made the merger application on their behalf.

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. With the establishment of the joint venture, the parties will acquire joint control of the same and the transaction therefore constitutes a merger as defined in the 2005 Law.

4.2 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 3 of the Competition (Merger and Acquisitions) (Jersey) Order 2010 (the **Order**) provides that the merger must be notified to the Authority for approval under Article 20(1) of the 2005 Law:

- where one or more of the parties to 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
- if another party to 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 and services in which the 25% share is held

Note Article 3 of the Order applies whether the upstream or downstream relationship is to or from persons in Jersey.

4.3 According to information provided by the parties, Sky has a share in excess of 25% in the supply of audio-visual services to Jersey households. Further there is a vertical relationship between Sky and Paramount in respect of the production and licensing of content (upstream) and the retail supply of audio-visual services (downstream). Although this vertical relationship takes place outside of Jersey and Paramount has no activities in Jersey, this does not exclude the application of Article 3 of the Order.

4.4 Therefore, on the basis of the information submitted by the parties to the transaction, the Authority has concluded that, by law, the transaction requires the approval of the Authority prior to its execution.

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.[1]

Views of the Parties

Product Market

5.3 Working from the European Commission's identification of three distinct levels of the audio-visual value chain as the (upstream) production market, the (intermediate) wholesale supply market and the (downstream) retail market, the Parties state that the joint venture will operate primarily in the wholesale and retail levels of the audio-visual supply chain.

5.4 The Parties note the services of the joint venture will not be marketed in Jersey, or offered to Jersey residents and will be geo-blocked from Jersey. They 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

5.5 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 suggest the precise definition of the relevant geographic market can remain open since the Transaction will not substantially lessen competition in Jersey on any reasonable basis.

---

[1] 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.

Effect on competition

5.6 The Parties refer to the "Territories"[2] of Europe in which they intend the joint venture to be active. Their application points out that these are jurisdictions in which they have no, or a limited, retail presence. [Redacted]

5.7 As the services of the joint venture will not be marketed in Jersey, offered to Jersey residents and further will be geo-blocked from Jersey, the Parties submit that the Proposed Transaction is not capable of substantially lessening (or indeed lessening at all) competition in Jersey or any part of Jersey.

5.8 [Redacted]

Authority Consideration

5.9 The Authority considers the precise market definition can be left open. This is because, as outlined below, the proposed merger would not result in a substantial lessening of competition in Jersey on any reasonable basis.

5.10 With respect to the effect on competition, Sky provide audio-visual services to Jersey and has a share of supply in excess of 25%. However Paramount is not active in the provision of audio-visual services and therefore the parties do not compete with each other in respect of the supply of audio-visual services in Jersey.

5.11 Mergers between parties who are active up or downstream of each other (so called "vertical" mergers) can affect competition if that vertical merger forecloses market access to competitors of one or more of the parties. There are a number of vertical relationships between the parties to the merger, however, these arrangements take place wholly outside of Jersey and do not produce any effects on any market in Jersey. Moreover, as set out by the parties the joint venture will not operate in Jersey and the services will be geo-blocked.

5.12 Given the above considerations, there are no competition concerns arising from this Transaction.

6. Decision

6.1 On this basis, the Authority concludes that the proposed joint venture of Sky and Paramount will not substantially lessen competition in Jersey or any part of Jersey; and the transaction is therefore approved under Article 22(1) of the 2005 Law.

08 December 2021 **By Order of the Jersey Competition Regulatory Authority**

[2] Albania, Andorra, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Finland, Hungary, Kosovo, Montenegro, North Macedonia, Norway, Poland, Portugal, Romania, Serbia, Slovenia, Spain, Sweden, the Netherlands and the Slovak Republic.