Decision

Proposed transaction to establish a joint venture: BBC Studios, Granada Media (C-037)

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Jersey Competition Regulatory Authority
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1 Summary

1.1 BBC Studios Distribution Limited (**BBCSD**) and Granada Media Limited (**Granada**) propose to establish a joint venture for the retail provision of BritBox, a subscription video on demand service (**SVoD**), to customers internationally (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 in Jersey and hereby approves the notified transaction.

2 The notified transaction

2.1 On 21 March 2022, the Authority received an application from BBCSD and Granada for the proposed joint venture. As set out in paragraph 3.9, the joint venture involves separately incorporated joint ventures, which for the purposes of this Decision, and the analysis contained within it, has been treated as a single concentration (**the BritBox JVs**).[1]

2.2 The Authority registered the application on its website with a deadline for comments of 1 April 2022. No submissions were received.

3 The parties

BBCSD and the BBC

3.1 BBCSD is a commercial subsidiary of the BBC, operating on an arms-length basis from the public services provided by the BBC. It is a company incorporated in the United Kingdom, with company number 01420028. The principal activity of BBCSD is to invest in content and intellectual property for global distribution through content sales, channels and ancillaries.

3.2 The BBC is the UK's leading public service 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 (and Jersey) through a variety of platforms and devices. The BBC's public service mission is enshrined in its Charter (Royal Charter number: RC000057) and Agreement with the UK Government and it is funded primarily via the licence fee.

3.3 The BBC has a number of commercial subsidiaries which operate on an arms-length basis from the public services, including BBCSD. The BBC has an obligation to ensure that the BBC's commercial and trading activities, do not, as a result of their relationship with the licence fee funded part of the BBC (the Public Service), distort the market or create an unfair competitive advantage.

3.4 The BBC ultimately has joint control (with ITV) of the BritBox JVs.

[1] The Authority notes the conclusion of the Decision is the same in both scenarios.

Granada and ITV

3.5 Granada is an intermediate holding company in the ITV group. It is a company incorporated in the United Kingdom, with company number 03106798.

3.6 ITV, as an integrated producer broadcaster, creates, owns and distributes high-quality content on multiple platforms globally. It broadcasts a large portfolio of commercial linear TV channels including the main ITV channel (which is a designated public service broadcast channel holding the Channel 3 licences for most of the UK excluding most of Scotland and which is also the largest commercial channel in the UK) as well as ITV2 and ITV3 (the two largest digital channels in the UK), ITV4, ITVBe, and CITV.

3.7 ITV ultimately has joint control (with the BBC) of the BritBox JVs.[2]

The BritBox JVs

3.8 BritBox, is a SVoD service providing subscribers with a range of British content under licence from BBCSD, ITV and other content providers. It has been introduced in response to the significant shift in recent years in the way TV and other video content are consumed, with a trend away from linear viewing to on-demand services.

3.9 To date, BritBox has been made available to customers internationally in North America, Australia and South Africa via a series of 50:50 joint ventures between subsidiaries of the BBC and ITV:

- BritBox LLC, providing services to the United States and Canada, incorporated in the United States with Department of State ID: 4861966. This service was launched in March 2017;
- BritBox Australia Partnership, providing services to Australia, incorporated with Australian business number: 49 274 475 031. This service was launched in November 2020; and
- BritBox International Limited (**BBI**), providing services to South Africa, incorporated in the United Kingdom with company number: 13131628. This service was launched in August 2021.

As noted above, these joint ventures have, for the purposes of this Decision and the analysis contained within it, been treated as a single concentration.

3.10 For the Parties, the rationale for BritBox is to act as the parties' principal route to market for the content they own or control in relation to SVoD, whilst not precluding them from licensing SVoD content to other retailers. In addition, the income from subscriptions for BritBox allow the parties to invest in the production of UK content.

3.11 BBCSD and ITV now intend to launch BritBox, via BBI, to customers in [Redacted].

3.12 Note, the international operations, conducted via the BritBox JVs, are separate from the BritBox service available to customers in Jersey and the UK. This service ("**BritBox UK**"), launched in

[2] Further, as set out in paragraph 3.12 is also has sole control of BritBox UK, which is separate to the Britbox JVs.

November 2019 and is ultimately solely controlled by ITV. As such, the establishment and launch of BritBox UK is not relevant to this application.

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.

4.3 According to information provided by the parties:

- the BBC has a share of more than 25% of weekly average linear broadcast TV channel views for Jersey; and
- ITV has been active in the production and licensing of TV content, which includes ITV producing programmes for and licensing programmes to the BBC which are available in Jersey. Further, since its launch in 2019, ITV has also had sole control of BritBox UK which offers both BBC and ITV content in Jersey.

4.4 Although these activities are not related to the BritBox JVs and the territories in which they operate, this does not exclude the application of Article 3 of the Order. 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

Approach

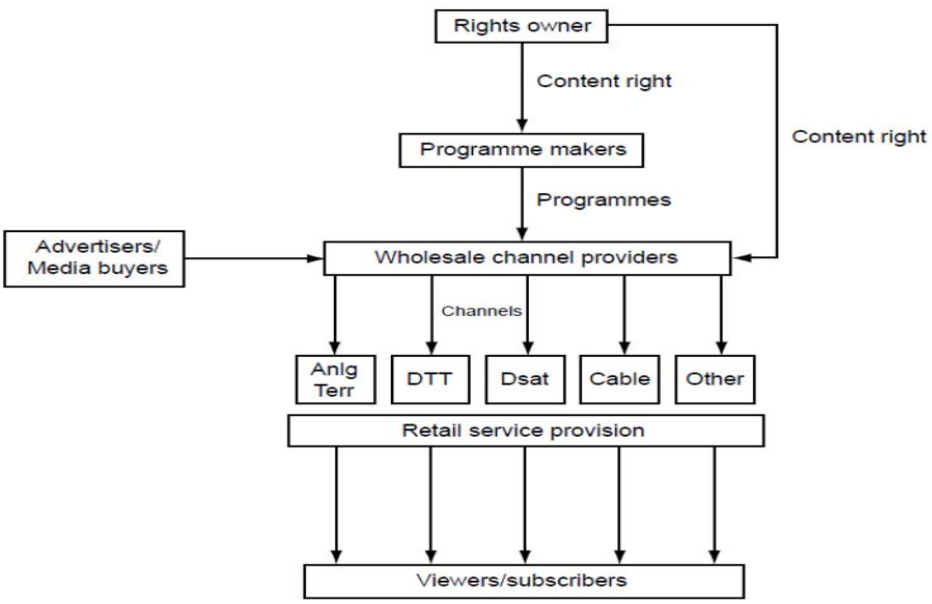
5.1 Under Article 22(4) of the 2005 Law, the Authority must determine if the merger would substantially lessen competition in Jersey or in any part of Jersey. As an initial step, the Authority will identify the markets which are likely to be affected by the merger since market definition provides a framework 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 With respect to the product market, the parties identified a TV supply and value chain illustrated by the following diagram from 2007 Competition Commission investigation, showing: content acquisition and production, content distribution; and the retailing of content and equipment.[4]

The television supply chain



Source: CC based on Ofcom diagram.

5.4 The parties note that while there have been significant changes in the retail service provision of TV since this diagram was produced, it remains helpful in terms of demonstrating the various levels of the TV supply chain, being:

- TV content and licensing: where TV content is produced and licensed;
- Wholesale supply of TV channels: the wholesale supply of TV channels to providers of retail TV services; and
- Retail supply of TV services to viewers/consumers: this includes:
  - the provision of services for free (e.g. Freeview) or pay (e.g. Sky);
  - linear programming (scheduled broadcasting on TV channels); and

[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.
[4] Competition Commission, Acquisition by BskyB of 17.9% of the shares in ITV plc (2007), paragraph 2.20.

- non-linear programming (for example, pay-per-view (PPV), Video on Demand and SVoD (i.e. BritBox), the latter sometimes referred to as OTT content which is often provided via the internet.

5.5 Within this context, the parties note the BritBox JVs operate at the retail level of the TV supply chain, though submit the precise definition can be left open as the creation and operation of the BritBox JVs will not give rise to any substantial lessening of competition in Jersey since they do not, and do not intend to, operate in Jersey.

5.6 With respect to the geographic market, the parties consider that the appropriate geographic market is the UK including the Channel Islands and the Isle of Man, which is consistent with the national scope of the retail TV services.

Authority consideration

5.7 The relevant product market is defined primarily by reference to the likely response of consumers and competitors.[5] 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 easily switch to other service providers.

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

6 Effect on competition

Approach

6.1 After defining the relevant market, the Authority considers the respective market shares of the competitors in that market, both before and after the proposed transaction. These shares can be used as an indication of the overall level of market concentration which will be brought about as a result of the merger.

6.2 The analysis will consider whether the merger creates or enhances the ability or incentive to exercise market power, either unilaterally or in co-ordination with competitors, and whether other market forces (such as the entry of new competitors or countervailing power of customers) will eliminate this risk. The assessment will also consider any pro-competitive effects or efficiencies that may result from the merger.

6.3 For horizontal mergers, the Authority can assess two potential types of anti-competitive effects – unilateral effects (i.e. the ability of the merged entity to raise prices unilaterally) and co-ordinated effects (i.e. the ability of the merged entity to raise prices with either the implicit or explicit co-operation of other competitors). For vertical or conglomerate mergers, the Authority's focus will be on assessing whether the merged entity would have the ability or incentive to foreclose the market to competitors, either by denying access to important inputs

[5] JCRA Guideline 7 – Market Definition.

upstream, or by denying access to 'routes to market' downstream. Another concern with conglomerate mergers is the ability to condition sales in a way that links products in separate markets together (through tying or bundling).

6.4 When assessing mergers, the Authority will have regard to the guidelines produced by the European Commission. It may also consider the substantive merger guidelines applied by the Competition and Markets Authority in the UK, as well as those of other competition authorities.

Views of the parties

6.5 The parties note, that the BritBox JVs do not and will not have any share of the market for the retail supply of TV services in the UK, the Channel Islands or the Isle of Man, since their activities are carried on exclusively overseas. As such, the launch of the BritBox JVs has not and will not change the competitive dynamics in Jersey.

6.6 The parties also note, the creation and launch of the BritBox JVs, will not increase the parties' ability or incentive to seek to withhold content from other retailers or foreclose access to their channels and content for consumers in Jersey. This is because:

- the parties have regulatory obligations to offer their public service channels for broadcast or distribution by means of every appropriate network (which is defined widely);
- the BritBox JVs will operate exclusively overseas, with Jersey services offered by BritBox UK, which is managed and controlled separately to the BritBoX JVs;
- although the BritBox service is the parties' principal route to market for the content they own or control in relation to SVoD, they are not precluded from licensing SVoD content to other retailers;
- the commercial incentive is for the widest possible distribution of the parties' channels and content maximises viewers and therefore revenue; and
- the parties face significant competitive constraints from other providers, such as Netflix, Amazon, Disney and others will remain.

Authority consideration

6.7 Given the BritBox JVs will not operate in Jersey, there are no horizontal overlaps between the activities of the BritBox JVs and the parties existing activities in Jersey.

6.8 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, as set out by the parties, the creation and launch of the BritBox JVs does not increase the parties' ability or incentive to seek to withhold content from other retailers or foreclose access to their channels and content for consumers in Jersey.

6.9 Therefore, the notified transaction will not give rise to a substantial lessening of competition on any reasonable basis.

7 Decision

7.1 On this basis, the Authority concludes that the proposed joint venture of BBCSD and Granada 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.

12 April 2022 **By Order of the Jersey Competition Regulatory Authority**