



DETERMINATION OF MERGER NOTIFICATION M/10/020 -

SKY/VMtv

Section 21 of the Competition Act 2002

Proposed acquisition by British Sky Broadcasting Limited of a portfolio of television channels known as Virgin Media Television from Virgin Media Inc

Dated 29 June 2010

Introduction

1. On 4 June 2010, in accordance with section 18 of the Competition Act 2002, the Competition Authority (the "Authority") received a notification of a proposed transaction whereby British Sky Broadcasting Limited, a subsidiary of British Sky Broadcasting plc ("Sky"), would acquire a portfolio of television channels known as Virgin Media Television ("VMtv") from Virgin Media Inc ("Virgin Media").
2. On 8 June 2010, the Authority forwarded a copy of the notification to the Minister, and notified the undertakings involved that it considered the proposed transaction to be a "media merger" within the meaning of section 23(1) of the Act.

The Undertakings Involved

The Acquirer

3. Sky, a public company domiciled in the United Kingdom ("UK"), is a holding company for a number of subsidiaries whose activities include:
 - the wholesale supply of television channels to cable and IPTV operators which supply them to their retail subscribers in the UK and Ireland;
 - the retail supply of Sky's and third parties' television channels to subscribers via a digital satellite platform ("DSat") operated by Sky, and via fixed line, internet and mobile technologies in the UK;
 - the provision of fixed line telephone and broadband services to Sky's residential DSat subscribers in the UK, and certain Internet-related services; and,
 - through Sky's wholly owned subsidiary Sky Media, the sale of television advertising and sponsorship on Sky's and third parties' channels.
4. In the State, Sky sells certain of its television channels to cable operators including UPC and certain IPTV network operators. In addition, Sky retails its own and third party television channels over its

DSat television platform and over fixed line, Internet and mobile technologies.

5. The Sky Channels which are broadcast in the State are the same as those broadcast in the UK and therefore carry the advertising and sponsorship sold in the UK, with the exception that on certain of the Sky channels (Sky 1, Sky News, Sky Sports 1, Sky Sports 2 and Sky Sports News) television advertising and sponsorship is sold within the State to advertisers specifically seeking to reach Irish-only audiences.
6. Sky Media Ireland, a wholly-owned subsidiary of Sky, is responsible for selling and managing Sky's advertising activities in the State. Sky Media Ireland predominantly sells television advertising for Sky's account but has recently started selling television advertising on behalf of third party television channels.

The Target Group

7. VMtv is a UK-based business of Virgin Media, an entertainment and communications provider. Virgin Media owns and operates a cable network in the UK, over which Virgin Media retails television channels as well as broadband and fixed line telephony services.
8. VMtv currently owns and operates a portfolio of television channels including: LIVING, LIVINGit, Bravo, Bravo 2, Challenge, Challenge Jackpot, Virgin 1 and their HD and time-shifted variants, (together the "VMtv Channels").
9. In the State, VMtv supplies the VMtv Channels on a wholesale basis to pay-TV operators. All the VMtv Channels (except Challenge Jackpot) are made available to consumers in the State by Sky over its DSat platform. The LIVING, Virgin 1 and Bravo channels are also made available to consumers in the State by UPC over its cable platform.
10. The VMtv channels are broadcast in the State as they are broadcast in the UK, including carrying the advertising and sponsorship sold in the UK, with the exception that advertising is sold on LIVING by TV3 on behalf of VMtv.

Rationale for the Proposed Transaction

11. According to Sky, the proposed transaction is an opportunity for further investment by Sky in the range and quality of programming available to consumers on general entertainment television channels. [...].

Third Party Submissions

12. No submissions were received.

Analysis

13. In its 2005 Determination in UGC (Chorus)/NTL,¹ the Authority distinguished between the wholesale supply of premium content television channels (comprising pay-tv sports and movies channels) and the wholesale supply of non-premium content television channels

¹ Determination M/05/024 UGC (Chorus)/NTL.

(comprising national free-to-air terrestrial channels, the UK terrestrial channels and other channels offered by Sky and other Channel providers).² The Authority has no reason in the present case to depart from this approach. Since the VMtv channels are non-premium content channels, the parties overlap horizontally in the wholesale supply of non-premium content television channels in the State. The activities of the parties also overlap in the sale of television advertising and sponsorship on non-premium content television channels in the State.

Horizontal Overlap

The Wholesale Supply of Non-premium Content Television Channels

14. The parties state in the notification that while Sky’s channel offering covers sports, movies, news and general entertainment, the VMtv channels only cover general entertainment. The parties state that “whether the Authority considers the transaction in the context of a frame of reference at least as wide as general entertainment channels or all television channels, the transaction would raise no competition concerns in Ireland”.
15. The VMtv channels can be broadly described as general entertainment channels. Table 1 below provides viewing shares of the top 20 general entertainment television channels broadcast in the State in 2009. None of these general entertainment channels are premium content television channels.

Table 1: Top 20 General Entertainment TV Channels in the State by Viewing Share, 2009³

Channels	Channel Group	Weighted Viewing Share %
RTÉ One	RTE	[25-35]
RTÉ Two	RTE	[10-20]
TV3	TV3	[10-20]
3e	TV3	[0-10]
TG4	TG4	[0-10]
BBC1	BBC	[5-15]
BBC2	BBC	[0-10]
UTV	UTV	[0-10]
Channel 4	CH4	[0-10]
E4	CH4	[0-10]
E4 +1	CH4	[0-10]
Sky 1	Sky	[0-10]
Comedy Central	Viacom	[0-10]

² The Authority’s investigation concluded that pay-TV channels and free-to-air channels are sufficiently different that they cannot be considered to comprise a single multi-channel television market. The Authority’s investigation found that they are different business models with pay-TV depending primarily on subscription revenue while free-to-air channels depend on advertising revenue and licence fees.

³ For the purpose of calculating these viewing shares, the parties defined “general entertainment TV channels” as those channels listed in the “Entertainment”, “Documentaries” and “Culture & Lifestyle” sections of Sky’s Electronic Programme Guide (EPG). This includes all of the VMtv Channels available in the State and the Sky Channels Sky 1, Sky 2, Sky 3, Sky Real Lives, Sky Real Lives 2, Sky Arts 1, Sky Arts 2 (including HD and time-shifted variants) and Sky 3D.

Comedy Central +1	Viacom	[0-10]
Living	VMtv	[0-10]
Challenge	VMtv	[0-10]
Discovery Ireland	Discovery	[0-10]
E! Entertainment	Comcast	[0-10]
Alibi	UKTV	[0-10]
Hallmark	NBC Universal	[0-10]
Total		100.0%⁴

Source: The parties based on AGB Nielsen Media Research - 2009 All Channels Report (all individuals in multi-channel homes)

16. On the basis of these shares, the parties' combined share of viewing post-acquisition would be [0-10]% with an increment of [0-10]%.⁵ Table 1 highlights the strong position of the RTÉ channels ([35-45]%), TV3 ([10-20]%) and the BBC channels ([10-20]%). It is clear that, post-acquisition, Sky will continue to face competition from the likes of RTÉ, TV3 and the BBC in the supply of non-premium content television channels in the State.
17. In light of the above, the Authority considers that the proposed acquisition raises no competition concerns in the wholesale supply of non-premium content television channels in the State.

The Sale of Television Advertising and Sponsorship on Non-premium Content Channels

18. Commercial broadcasters earn revenue from the sale of advertising on their channels and therefore broadcasters compete to attract viewing in order to drive advertising sales. The parties state that most of the Sky Channels and the VMtv Channels are broadcast in the State as they are broadcast in the UK and therefore the Irish broadcast of these channels carries the advertising sold in the UK. However, as noted above, on a small number of the Sky Channels and on one of the VMtv Channels (LIVING), television advertising is sold to advertisers seeking to specifically target Irish-only audiences.
19. For the sale of Irish television advertising, Sky operates via its wholly-owned sales house, Sky Media Ireland. Sky Media Ireland sells Irish television advertising on the following Sky Channels: Sky 1, Sky News, Sky Sports 1, Sky Sports 2, and Sky Sports News. VMtv does not operate a sales house in Ireland. Irish television advertising on LIVING is sold by TV3 on behalf of VMtv.
20. According to estimates provided by Sky, the sale of advertising on LIVING accounted for only [0-10]% of the total revenue earned from television advertising in the State in 2009. The RTÉ channels accounted for [55-65]% of total advertising revenue, TV3 accounted for [15-25]% and Sky accounted for [10-20]%. The proposed acquisition will therefore result in a minimal increase in Sky's share of total advertising revenue in the State. Sky will continue to face

⁴ No provision has been made in this table for general entertainment channels outside the top 20. The parties, however, state that this does not impact on the analysis.

⁵ The parties state that both Sky and VMtv broadcast other general entertainment channels in the State. However, the viewing share of each of these channels is not sufficiently high within the State as to register in the top 20 general entertainment channels and the parties estimate that the share of these channels would be minimal.

competition post-acquisition from RTÉ and TV3 for the sale of television advertising on non-premium content television channels.

21. In light of the above, the Authority considers that the proposed acquisition will not raise any competition concerns in the sale of television advertising on non-premium content channels in the State.

Vertical Overlap

The Retail Supply of Non-premium Content Television Channels

22. The vertical overlap arises as a result of VMtv selling its television channels to both Sky and competitors of Sky (i.e., other pay-tv operators in the State). Thus, there is a vertical overlap between the parties' activities in the State.
23. The Authority's market enquiries confirmed that, given the minimal viewing share of the VMtv channels in the State (as illustrated in Table 1 above), the channels to be acquired will not give Sky the ability or incentive to withhold the supply of premium or non-premium content television channels to its competitors in the pay-tv market post-acquisition.
24. The Authority therefore considers that the proposed acquisition raises no competition concerns in the retail supply of non-premium content television channels to pay-tv operators in the State.

Ancillary Restraints

25. The agreement contains covenants restricting the parties from soliciting employees for a period of [...] following completion. In the case of the sellers, this restricts [...]. In the case of the purchaser, this restricts [...].
26. In addition, the agreement contains a [non-compete] covenant restricting [...].
27. The parties state that the covenants are necessary in order to protect the value of the goodwill transferred in the proposed transaction. The parties also state that the covenants are limited to [...] in duration in the case of the non-solicitation obligations, and to [...] in the case of the non-compete obligation.
28. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

Determination

29. The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by British Sky Broadcasting Limited of a portfolio of television channels known as Virgin Media Television from Virgin Media Inc will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect, subject to section 23(9)(a) of the Act.

For the Competition Authority

Dr. Stanley Wong

Member of the Competition Authority