



**DETERMINATION OF MERGER NOTIFICATION M/13/003 – BT / ESPN
Global**

Section 21 of the Competition Act 2002

Proposed acquisition by BT Group plc of ESPN Global Limited

Dated 25/04/2013

Introduction

1. On 27 February 2013, in accordance with Section 18(1)(b) of the Competition Act, 2002 ("the Act") the Competition Authority ("the Authority") received a notification of a proposed acquisition by BT Group plc ("BT Group") through its indirectly held wholly owned subsidiary British Telecommunications public limited company ("BT") of the entire issued share capital of ESPN Global Limited ("ESPN Global") from ESPN Inc ("ESPN Inc.").
2. On 1 March 2013, the Authority forwarded a copy of the notification to the Minister as the proposed transaction involves a media business within the meaning of the Act.

The Undertakings Involved

Acquirer

3. BT is the principal trading company of the BT Group of companies. BT is a wholly owned subsidiary of BT Group Investments Limited which is in turn wholly-owned by BT Group. BT Group is a public limited company registered in England and Wales and listed on the London and New York Stock Exchanges.
4. BT Group is one of the world's largest communications services companies providing services to customers in the UK across more than 170 countries worldwide. BT Group is involved globally in the provision of fixed-line services, broadband, mobile, networked IT services and TV products and services.
5. BT Group has four 'customer facing' business units, supported by its internal services unit, BT Technology, Service & Operations. The four business units are:
 - BT Retail – which serves business and residential customers with operations mainly in the UK;
 - BT Wholesale – which operates BT's networks and provides network services and solutions to other communications companies including: (1) voice, broadband and data communications services for fixed and mobile operators, internet service providers and telecoms retailers in the UK and

- to BT's other businesses; and (2) managed network services for fixed and mobile communications providers;
- BT Global Services – which provides managed networked IT services and solutions to multi-site entities worldwide; and
 - Openreach – which owns, maintains and develops BT Group's access network linking homes and businesses to the networks of the UK's communications providers.
6. Globally BT Group supply managed networked IT services to multinational corporations, domestic businesses and national and local government organisations.
 7. In the UK BT Group provide communications services to customers (including: consumers, small and medium sized enterprises and the public sector) and sells wholesale products and services to communications providers.
 8. BT Vision, part of the BT Retail business, is involved in broadcasting in the UK via a subscription digital TV service. BT Vision is a hybrid television platform offering Freeview channels over the existing Digital Terrestrial Television network and catch-up and video-on-demand content over the Internet Protocol Television network on both BT Vision set-top boxes and the recently launched YouView platform. Content on both BT Vision and YouView from BT can only be received on the set-top boxes provided by BT, which are only sold to customers in the UK and require a BT PSTN line and a BT broadband connection.
 9. In 2012 BT Group secured the UK rights to broadcast 38 games a season for the 2013-2014 to 2015-2016 seasons of the English Football Association Premier League ("FAPL"). In February 2013 BT secured the Irish FAPL rights to broadcast 38 games for 2015-2016.¹
 10. BT Group intends to launch two BT Sports channels (BT Sports 1 and 2) in August 2013, following the securing of the FAPL rights. BT Sports 1 and 2 will provide a range of premium sports content, with a strong focus on football. BT Vision will run the new channels once launched. BT Vision is not available to customers in the State in any format and BT Vision currently has no activities within the State.
 11. Within the State BT Group provides network IT services to government and major business. BT Group also provides wholesale network services, by supplying telecoms products and services to communications providers.
 12. For the financial year ending 31 March 2012, BT Group had a worldwide turnover of €22,370,338,185 and a turnover in the State of €[...].²

¹ See: <http://www.premierleague.com/en-gb/news/news/2012-13/feb/BskyB-and-BT-acquire-premier-league-rights-in-ireland.html>

² Turnover in Sterling is converted into Euros using the ECB's average exchange rate calculated according to BT's financial year ending 31 March 2012: €1 = 00.8630625.

The Vendor

13. ESPN Inc. is a US corporation based in Connecticut. It is jointly owned by The Walt Disney Company (80% - held by its indirect subsidiary ABC, Inc.) and Hearst Corporation (20%).
14. ESPN Inc is a multimedia sports entertainment company with operations globally across 190 territories in publishing, radio, cable and non-broadcast television, online and event management.³ ESPN Inc. also syndicates sports programming material to agencies and channel operators worldwide.
15. Aside from its interest in the Target Business (set out below) in the State, ESPN Inc operates via subsidiary companies, ESPN Classic Sport Limited which owns and operates the ESPN Classic channel.⁴ ESPN Classic was launched in the UK 2006 on Sky and later on Virgin Media and ESPN Classic was launched on UPC in Ireland in 2009. ESPN Classic broadcasts a range of archive sports coverage, with a large emphasis on football. The parties submit that, following the proposed transaction, the ESPN Classic channel will continue to be indirectly owned and operated by ESPN Inc. The parties also state that it is expected that ESPN Classic will cease to air in the UK and the State.
16. ESPN Inc in the UK also operates a digital business comprising six websites (e.g. the rugby site espn.scrum.co.uk and cricket specialist, espn.cricinfo.com) and a syndication business from the UK which sells rights to events such as the X Games and Indy Car racing to other broadcasters. Neither of these two business activities form part of the proposed transaction and will be retained by ESPN Inc. and not transferred to BT Group.

The Target Business

17. The target business comprises the ESPN and ESPN America Sports channels and associated sports rights in the State and the UK (together, the "Target Business"). The Target Business is owned by ESPN (Europe and Middle East and Africa) Limited ("ESPN EMEA"), a private limited company, incorporated under the laws of England and Wales and based in London.
18. ESPN EMEA is an indirect wholly owned subsidiary of ESPN Global Limited ("ESPN Global"), an Irish registered company, which in turn is a wholly owned direct subsidiary of ESPN Inc.⁵
19. In the UK and the State, ESPN Global brings sports to approximately 3.5 million households through the following sports channels:
 - ESPN – owned and operated by ESPN EMEA and launched in 2009, it offers a package of sports rights including the FAPL, Scottish Premier League ("SPL"), UEFA Europa League, Premiership Rugby and FA Cup; and

³ Source: ESPN International Fact Sheet – available at <http://espnmediazone.com/us/espn-international-fact-sheet/>

⁴ [...].

⁵ [...].

- ESPN America – owned and operated by ESPN EMEA, launched in 2002 as NASN (the North American Sports Network). ESPN America broadcasts a selection of North American professional and collegiate sports leagues including Major League Baseball (MLB), National Basketball Association (NBA), National Collegiate Athletic Association (NCAA) and Canadian Football League (CFL).
20. Both channels are available to customers in the State on cable via UPC Ireland and Magnet, and on satellite via Sky Ireland. Both channels are also available in High Definition format.
21. For the financial year ending 29 September 2012, ESPN had a worldwide turnover of approximately €[...] and a turnover in the State of approximately €[...].⁶

The Proposed Transaction

22. The proposed transaction will result in the acquisition by BT Group of control of ESPN Global pursuant to a Share Purchase Agreement dated 25 February 2013.
23. The transaction will not include ESPN Classic channel, owned and operated by ESPN Classic Sports Limited, an indirect subsidiary of ESPN Inc. The Parties have submitted to the Authority that this channel will cease to air in the UK and the State following completion of the proposed transaction. In addition, the proposed transaction will not include certain assets, contracts and people pertaining to ESPN Global's current digital business operated in the UK prior to completion set out at paragraph 16 above.

The Rationale

24. The parties submit that ESPN Inc. is seeking to exit the wholesale channels business in the UK and the State and to cease there operations in August 2013. The parties further submit that this decision followed the failure by ESPN Global to secure the broadcasting rights for several leading sporting events.⁷ In addition, ESPN Inc confirmed that [...].⁸
25. For the BT Group, [...]. BT Group hope that the proposed a acquisition will help BT [...]. In addition, BT will gain the addition of [...].

Third Party Submissions

26. No third party submission was received.

⁶ Turnover was converted into Euros on the basis of the ECB's average exchange rate calculated according to ESPN EMEA's financial year ending 29 September 2012: €1 = 80.8401775

⁷ See media reports in 2012 referring to the potential exit of the market at: <http://www.pocket-lint.com/news/115417-espn-could-quit-uk-fa-cup> and <http://www.digitaltveurope.net/23914/espn-eyes-international-exit/> and reports following the announcement of the proposed transaction in February 2013 at: <http://www.guardian.co.uk/media/2013/feb/06/disney-considers-espn-exit-uk-sports> and <http://www.ft.com/intl/cms/s/0/602fa218-760b-11e2-9891-00144feabdc0.html>.

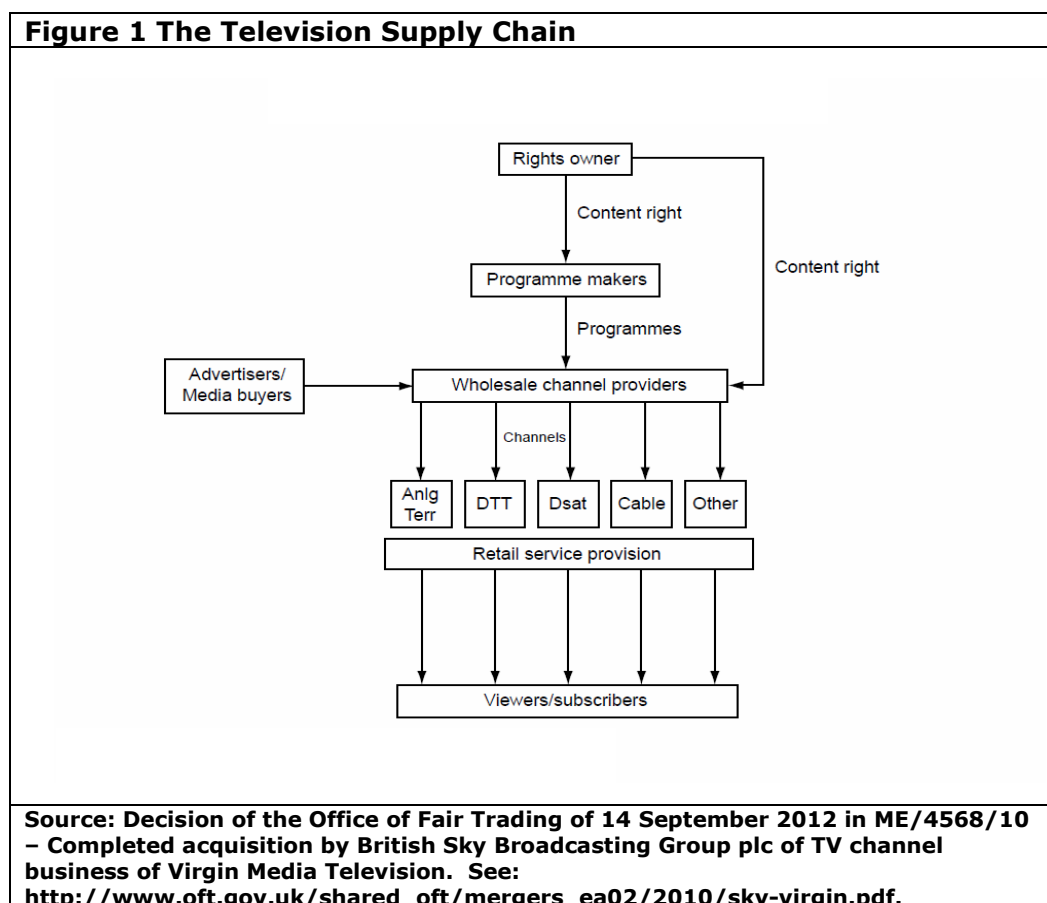
⁸ [...].

Analysis

27. The proposed transaction concerns the broadcasting sector. In particular it concerns the wholesale distribution of channels, the retail distribution of sports channels within the State and the purchasing of sporting rights.

Horizontal Overlap

28. The parties submit that the relevant product markets concerned could potentially be (1) upstream purchasing of sports rights; (2) downstream exploitation of sports rights either through (i) the wholesale distribution of sports channels or (ii) the retailing of sports channels and/or subscription packages. Furthermore, the parties submit that there is no overlap in any of these activities.
29. The diagram below illustrates the general structure of the supply chain in the television sector, including content acquisition and production; content distribution; and retailing of content and equipment.



(1) *Upstream purchasing of sports rights;*

30. The rights to broadcast sporting events (including live broadcasting) are held by the rights owner (e.g. FAPL). The rights owner exploits their rights by granting the use of those rights to a downstream bidder/channel operator following an auction process or through negotiation. Such an award is usually made on an

exclusive basis to individual channels using periodic competitive tendering procedures or negotiation processes.

31. The BT Group began to bid for sporting rights in 2012 and in June of that year it secured the UK rights to broadcast 38 games a season for the 2013-2014 to 2015-2016 seasons for FAPL. Later that year, BT secured further sporting rights covering both the UK and the State. The rights held by each of BT Group and ESPN are set out in table 1 below.

Table 1 – Sports Rights Held by BT Group and ESPN

Overview of Sporting Rights Held				
Holder	Genre	Event	Season / Rights Period	Territory
BT Group	Football	FAPL	2013/14 to 2015/16	the State ⁹
BT Group	Football	FAPL	2013/14, 2014/15 and 2015/16	UK
BT Group	Football	Brazilian Football (Brasilia Serie A)	2013-2017	UK & the State
BT Group	Football	Ligue 1	2013/14 to 2017/18	UK & the State
BT Group	Football	MLS	2014-2018	UK & the State
BT Group	Football	Italian football (Serie A)	2013-14; 2014-15	UK & the State
BT Group	Rugby	Premier Rugby	2013/14; 2014/15; 2015/16; and 2016/17	UK & the State
BT Group	Rugby	French Rugby (Top 14) Canal +	2012/2013; 2013/2014	UK & the State
BT Group	Tennis	Women's tennis	2013-2017	UK & the State
ESPN	Football	FAPL	2009/10 – 2012/13	UK
ESPN	Football	FAPL	2009/10 – 2012/13	The State
ESPN	Football	FA Cup	2010/11 – 2013/14	UK & the State
ESPN	Football	Bundesliga	2009/10 – 2014/15	UK & the State
ESPN	Football	Europa League	2009/10 – 2014/15	UK & the State
ESPN	Football	SPL	2009/10 – 2016/17	UK & the State

Source: the parties

32. ESPN began to bid for sporting rights in the UK and the State in 2006 and again in 2009 (for the FAPL rights) but was unsuccessful on both occasions. Sky and Setanta Sports secured the rights in both 2006 and 2009. ESPN later secured the remaining FAPL rights held by Setanta Sports in 2009 (including those for the 2010-2013 seasons).¹⁰ The remaining rights secured by ESPN for the period 2009 to 2013 resulted from direct negotiations with the rights holder and are mainly the balance of the rights held previously by Setanta Sports.
33. The parties submit that there is no overlap with respect to the upstream purchasing of sporting rights. This is based on two

⁹ See: <http://www.premierleague.com/en-gb/news/news/2012-13/feb/BskyB-and-BT-acquire-premier-league-rights-in-ireland.html>

¹⁰ Following the re-auction of the rights by FAPL after Setanta Sports UK went into administration.

factors: (1) that the 'rights' held relate to different seasons and different events and the rights owned by ESPN will expire before BT Group's rights commence; and (2) there is no historic overlap, as the BT Group only commenced bidding for sporting rights in 2012, [...].¹¹

34. Where a party is unsuccessful in the award of a particular right in one season, this will not preclude that party from engaging in future bid processes or negotiating with rights holders to secure rights. Thus an unsuccessful party to one bid can remain a competitor in the market for the upstream purchasing of future sporting rights.
35. That this is the case is reflected in the award of the rights for the UEFA Europa League for 2012-2015, where ESPN (already a rights holder for an earlier season) retained one package with the other package awarded to ITV, while for the previous season, ITV, ESPN and Five each held rights relating to the UK and Setanta held some rights with respect to the State. This example demonstrates that different rights can be, and often are, awarded to different channels/bidders on a periodic basis.
36. Consequently the BT Group and ESPN could compete against each other in respect of the acquisition of premium content sport rights with respect to the UK and State.¹²
37. The markets for the acquisition of sports broadcasting rights appear to be competitive. With respect to sporting rights that relate exclusively to the State, the Authority understands that a number of alternative operators could bid for such rights including Sky, Eurosport, BBC, UTV, Setanta Ireland, RTE and TV3.
38. With respect to sporting rights covering both the State and the UK, auction/bid process undertaken in 2012 awarded cricket rights to SKY, rugby rights to Premier Sports and football rights to ESPN.¹³ A number of potential bid participants who could bid for such rights exist including BBC, ITV, Sky, Channel 4, S4/C, Channel 5, Eurosport, Premier Sports and individual Club TV Channels. Each of these except Channel 4 currently holds rights to differing events.¹⁴ The Al Jazeera network is also reported to be interested in bidding for sports rights.¹⁵

¹¹ As submitted by the parties in the notification. [...].

¹² Namely for intellectual property rights awarded to an entity to broadcast a particular event for the State or for both the UK and the State, with the duration of such rights and their frequency determined by the rights owner.

¹³ Information provided by the parties as follows: (1) Rights for Cricket awarded following auction process in July/August 2012 to SKY for South Africa (domestic international cricket) for 8 years and Australia (domestic international cricket) for 4 years; (2) Rights for Cricket awarded following an auction process in August 2012 and January 2013 for West Indies (domestic international cricket) for 8 years, also to SKY; (3) Rights to Australian Rugby League (NRL) awarded to Premier TV following an auction process in October/November 2012; and (4) ESPN were awarded rights to the German Bundesliga football for four years following an informal tender process in August 2012.

¹⁴ Please see list of football rights for the UK held by various stations at: <http://www.live-footballontv.com/football-tv-rights-uk.html>

¹⁵ See: <http://www.dailymail.co.uk/sport/football/article-2052402/Sky-face-Premier-League-TV-rights-battle-Al-Jazeera.html>, http://www.satellitetelevision.ie/premier_league_jsc_sports and <http://uk.eurosport.yahoo.com/28022012/58/premier-league-al-jazeera-set-sky-football-rights.html>.

39. In addition, following enquiries, neither the FAPL nor the Football Association of Ireland expressed concerns with respect to the proposed transaction.
40. In light of the above, the Authority is of the view that the proposed transaction does not give rise to competition concerns with respect to the acquisition of premium content sports rights for the State.

(2) Downstream exploitation of sporting rights:

41. The parties submit that there is no overlap within either the (1) wholesale distribution of sports channels, or (2) retailing of sports channels and/or subscription packages in the State.
42. BT Group is not currently engaged in either the wholesale distribution or the retailing of sports channels in the State.
43. BT Group will become engaged the retail distribution and [...] in the UK following the launch of BT sports channels in summer 2013. BT Group has informed the Authority that the BT Group initially plans to retail the channels to BT Vision and 'self-retail' to Sky subscribers in the UK.
44. In respect of the State, BT Group has confirmed to the Authority that it only plans to wholesale these channel in the State, assuming that an agreement can be concluded with an Irish pay TV platform. In response to queries raised by the Authority, BT Group confirmed that [...].
45. ESPN Global is engaged in the wholesale distribution of sports channels within the State. It is not engaged in the retailing of sports channels and/or subscription packages within the State.
46. The parties submit that BT is taking over a wholesale channels business which will cease to broadcast around the time of the completion of the proposed transaction and intends to repackage this channel in its own retail offering in the UK. The parties submit that BT is essentially 'stepping into the shoes' of ESPN Global in the potential wholesale of sporting channels. ESPN Global confirmed that ESPN Inc had [...].¹⁶
47. There could be an argument that the acquisition could harm competition by preventing actual or potential competition between BT Group and ESPN. In this case however the Authority's investigation has shown that there will be no such adverse effect. In this regard the Authority notes, among other things, ESPN's reconsideration of and changed thinking with regard to its role in the UK and the State, that BT Group does not currently retail sports channels/subscription packages in the state and prior to proposing this transaction had made no plans to do so, and although it very recently acquired rights with respect the State, the bidding for this was at a time when BT reasonably expected that it would be 'stepping into shoes' of ESPN.
48. In addition, following enquiries, no platform operator within the State expressed concerns with respect to the proposed transaction.

¹⁶ This was confirmed to the Authority by ESPN [...].

49. In light of the above, the Authority is of the view that the proposed transaction does not give rise to competition concerns with respect to the wholesale distribution or retailing of sports channels in the State.

Conclusion

50. In light of the above, the proposed transaction will not raise any competition concerns in the State.

Ancillary Restraints

51. ESPN Inc. has entered into non-solicitation and non-compete covenants to apply from completion until [...]. These restrictions bind both ESPN Inc and any subsidiary of ESPN inc. These restrictions are consistent with past Authority guidance and as such can be considered as directly related to and necessary for the implementation of the proposed transaction.

DETERMINATION

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 BT Group plc, through its indirectly held wholly owned subsidiary British Telecommunications Public Limited Company, of sole control of ESPN Global Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, that the acquisition may be put into effect subject to the provision of section 23(9)(a) of the Act.

For the Competition Authority



Stephen Calkins
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Director, Mergers Division