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(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION
POLICY

EUROPEAN COMMISSION

**Communication from the Commission published pursuant to Article 27(4) of Council Regulation
(EC) No 1/2003 in Case AT.40023 — Cross-border access to pay-TV**

(2016/C 141/07)

1. Introduction

- (1) According to Article 9 of the Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty ⁽¹⁾, the Commission may decide — in cases where it intends to adopt a decision requiring that an infringement is brought to an end and the parties concerned offer commitments to meet the concerns expressed to them by the Commission in its preliminary assessment — to make those commitments binding on the undertakings. Such a decision may be adopted for a specified period and shall conclude that there are no longer grounds for action by the Commission.
- (2) According to Article 27(4) of the same Regulation, the Commission shall publish a concise summary of the case and the main content of the commitments. Interested parties may submit their observations within the time limit fixed by the Commission.

2. Summary of the Case

- (3) On 23 July 2015 the Commission adopted a Statement of Objections ('SO') concerning, inter alia, conduct by Paramount Pictures International Limited (as successor by merger to Viacom Global (Netherlands) B.V. ('PPIL') and Viacom Inc. ('Viacom') (together 'Paramount'). The SO also constitutes a preliminary assessment within the meaning of Article 9(1) of Regulation (EC) No 1/2003.
- (4) According to the SO, Paramount has entered into licensing agreements with the pay-TV broadcaster, Sky UK Limited, containing clauses that:
 - prohibit or limit Sky from making its retail pay-TV services available in response to unsolicited requests from consumers residing or located in the EEA but outside the United Kingdom and the Republic of Ireland, and/or
 - require Paramount to prohibit or limit broadcasters located within the EEA but outside the United Kingdom and the Republic of Ireland from making their retail pay-TV services available in response to unsolicited requests from consumers residing or located in the United Kingdom and the Republic of Ireland (both types of clauses are referred to as the 'Contested Clauses').
- (5) The SO reaches the preliminary conclusion that Paramount's conduct constitutes an infringement of Article 101 of the TFEU and Article 53 of the Agreement on the European Economic Area ('EEA Agreement') because: (i) the clauses have as their object the restriction of competition within the meaning of Article 101(1) TFEU and Article 53(1) of the EEA Agreement; (ii) there are no circumstances falling within the economic and legal context of the clauses that would justify the finding that they are not liable to impair competition; and (iii) the clauses do not satisfy the conditions for an exemption under Article 101(3) TFEU and Article 53(3) of the EEA Agreement.

⁽¹⁾ OJ L 1, 4.1.2003, p. 1. With effect from 1 December 2009, Articles 81 and 82 of the EC Treaty have become Articles 101 and, respectively, 102 of the TFEU. The two sets of provisions are in substance identical. For the purposes of this notice, references to Articles 101 and 102 of the TFEU should be understood as references to Articles 81 and 82 of the EC Treaty when applicable.

- (6) The SO also concerns conduct by, on the one hand, Sky, and on the other hand, Disney, NBCUniversal, Sony, Twentieth Century Fox and Warner Bros. The Commission is still investigating the compatibility with Article 101 of the TFEU and Article 53 of the EEA Agreement of the conduct of Disney, NBCUniversal, Sony, Twentieth Century Fox, Warner Bros and Sky (including the latter's conduct in relation to the abovementioned clauses in the licensing agreements between Paramount and Sky).

3. The main content of the offered commitments

- (7) Paramount does not agree with the concerns expressed in the SO. It has nevertheless offered commitments pursuant to Article 9 of Regulation (EC) No 1/2003 to meet the Commission's competition concerns. The key elements of the commitments would be as follows:

- (a) Paramount should not enter into, renew or extend a Pay-TV Output License Agreement⁽¹⁾ that, with respect to any territory in the EEA, (re)introduces any Additional Obligations. These are defined as:

- contractual obligations of the type identified in the SO preventing or limiting a Broadcaster from responding to unsolicited requests from consumers residing and located in the European Economic Area but outside of such Broadcaster's licensed territory ('Broadcaster Obligation'),
- contractual obligations of the type identified in the SO requiring Paramount to prohibit or limit Broadcasters located within the European Economic Area but outside a Broadcaster's licensed territory from responding to unsolicited requests from consumers residing and located inside such Broadcaster's licensed territory ('Paramount Obligation');

- (b) Paramount should not:

- seek to enforce or initiate proceedings before a court or tribunal for the violation of a Broadcaster Obligation in an existing Pay-TV Output License Agreement, and
- directly or indirectly honour or enforce a Paramount Obligation in an existing Pay-TV Output License Agreement.

- (8) Paramount's commitments would cover both linear pay-TV services and, to the extent included in the licence (or separate licence(s)) with a broadcaster, subscription video-on-demand services ('SVOD').

- (9) The duration of the commitments would be five years from the date on which Paramount receives formal notification of the Commission's decision pursuant to Article 9 of Regulation (EC) No 1/2003.

- (10) The commitments are published in full in English on the website of the Directorate-General for Competition at:

http://ec.europa.eu/competition/index_en.html

4. Invitation to make comments

- (11) Subject to market testing, the Commission intends to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring binding the commitments summarised above and published on the internet, on the website of the Directorate-General for Competition, to be binding.

- (12) In accordance with Article 27(4) of Regulation (EC) No 1/2003, the Commission invites interested third parties to submit their observations on the proposed commitments. These observations must reach the Commission not later than one month following the date of this publication. Interested third parties are also asked to submit a non-confidential version of their comments, in which any information they claim to be business secrets and other confidential information should be deleted and replaced as required by a non-confidential summary or by the words 'business secrets' or 'confidential'.

- (13) Answers and comments should preferably be reasoned and should set out the relevant facts. If you identify a problem with any part of the proposed commitments, the Commission would also invite you to suggest a possible solution.

(1) 'Pay-TV Output License Agreement' is defined as an agreement that licenses to a Broadcaster (as the licensee) a licensor's future output of defined films on an exclusive basis (and may include other audiovisual content) for a limited period of time during which the Broadcaster may exhibit the films on a Pay-TV basis and, to the extent included in the licence (or separate licence(s)) with such Broadcaster, on an SVOD basis.

- (14) Observations can be sent to the Commission under reference number AT.40023 — Cross-border access to pay-TV either by email (COMP-GREFFE-ANTITRUST@ec.europa.eu), by fax (+32 22950128) or by post, to the following address:

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