



Antitrust: Commission sends Statement of Objections on cross-border provision of pay-TV services available in UK and Ireland

Brussels, 23 July 2015

The European Commission has today sent a Statement of Objections to Sky UK and six major US film studios: Disney, NBCUniversal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros. The Commission takes the preliminary view that each of the six studios and Sky UK have bilaterally agreed to put in place contractual restrictions that prevent Sky UK from allowing EU consumers located elsewhere to access, via satellite or online, pay-TV services available in the UK and Ireland. Without these restrictions, Sky UK would be free to decide on commercial grounds whether to sell its pay-TV services to such consumers requesting access to its services, taking into account the regulatory framework including, as regards online pay-TV services, the relevant national copyright laws.

If the Commission's preliminary position were to be confirmed, each of the companies would have breached EU competition rules prohibiting anti-competitive agreements. The sending of a Statement of Objections does not prejudge the outcome of the investigation.

EU Commissioner in charge of competition policy Margrethe Vestager said: *"European consumers want to watch the pay-TV channels of their choice regardless of where they live or travel in the EU. Our investigation shows that they cannot do this today, also because licensing agreements between the major film studios and Sky UK do not allow consumers in other EU countries to access Sky's UK and Irish pay-TV services, via satellite or online. We believe that this may be in breach of EU competition rules. The studios and Sky UK now have the chance to respond to our concerns."*

US film studios typically license audio-visual content, such as films, to a single pay-TV broadcaster in each Member State (or combined for a few Member States with a common language). The Commission's [investigation, which was opened in January 2014](#), identified clauses in licensing agreements between the six film studios and Sky UK which require Sky UK to block access to films through its online pay-TV services (so-called "geo-blocking") or through its satellite pay-TV services to consumers outside its licensed territory (UK and Ireland).

The Commission's preliminary view as set out in the Statement of Objections is that such clauses restrict Sky UK's ability to accept unsolicited requests for its pay-TV services from consumers located abroad, i.e. from consumers located in Member States where Sky UK is not actively promoting or advertising its services (so-called "passive sales"). Some agreements also contain clauses requiring studios to ensure that, in their licensing agreements with broadcasters other than Sky UK, these broadcasters are prevented from making their pay-TV services available in the UK and Ireland.

As a result, these clauses grant 'absolute territorial exclusivity' to Sky UK and/or other broadcasters. They eliminate cross-border competition between pay-TV broadcasters and partition the internal market along national borders. The Commission's preliminary conclusion is that, in the absence of convincing justification, the clauses would constitute a serious violation of EU rules that prohibit anticompetitive agreements (Article 101 of the Treaty on the Functioning of the European Union).

The Commission previously also set out concerns as regards licensing agreements between the film studios and other major European broadcasters (Canal Plus of France, Sky Italia of Italy, Sky Deutschland of Germany and DTS of Spain). The Commission continues to examine cross-border access to pay-TV services in these Member States.

These antitrust investigations focus on contractual restrictions on passive sales outside the licensed territory in agreements between studios and broadcasters. At the same time, broadcasters also have to take account of the applicable regulatory framework beyond EU competition law when considering sales to consumers located elsewhere. This includes, for online pay-TV services, relevant national copyright laws. In this context, in parallel to its actions under EU competition law, the Commission will propose to modernise EU copyright rules and review the EU [Satellite and Cable Directive](#) as part of its [Digital Single Market Strategy](#) adopted in May 2015. The aim is to reduce the differences between national copyright regimes and allow for wider access to online content across the EU.

Background

EU antitrust rules prohibit the restriction of passive sales, i.e. the sales of products cross-border in the

internal market responding to demands from customers not solicited by the seller. In its October 2011 ruling on the Premier League/Murphy cases ([C-403/08 and C-429/08](#)), the EU Court of Justice specifically addressed the issue of absolute territorial restrictions in licence agreements for broadcasting services. The Court held that certain licensing provisions preventing a satellite broadcaster from providing its broadcasts to consumers outside the licensed territory enable each broadcaster to be granted absolute territorial exclusivity in the area covered by the license, thus eliminating all competition between broadcasters and partitioning the market in accordance with national borders.

As part of its [Digital Single Market strategy](#), the Commission will propose to reform EU copyright rules. It seeks to improve people's access to cultural content online as well as to open new opportunities for creators and the content industry. More specifically, the Commission wants to ensure that users who buy online content such as films, music or articles at home can also enjoy them while travelling across Europe. Currently, service providers, in particular in the audio-visual sector, may be prevented from providing such portability features by copyright licensing arrangements. The Commission also wants to facilitate wider access to online content across borders. In this context, the [Satellite and Cable Directive \(93/83/EEC\)](#) will be reviewed and a public consultation will be launched after the summer. The Commission will notably assess if the scope of the Directive needs to be enlarged to broadcasters' online transmissions.

Procedural background

A Statement of Objections is a formal step in European Commission investigations into suspected violations of EU antitrust rules. The European Commission informs the parties concerned in writing of the objections raised against them and the parties can reply in writing of the objections raised against them. The addressees can examine the documents in the European Commission's investigation file, reply in writing and request an oral hearing to present their comments before representatives of the European Commission and national competition authorities. The European Commission takes a final decision only after the parties have exercised their rights of defence.

There is no legal deadline for the European Commission to complete antitrust inquiries into anticompetitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Commission and the exercise of the rights of defence.

For more information, you may consult the [public case register](#) on the [competition](#) website under the case number [40023](#).

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