



Antitrust: Commission seeks feedback on commitments offered by Paramount Pictures in pay-TV investigation

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The European Commission is inviting comments from interested parties on commitments offered by Paramount Pictures to address competition concerns relating to contractual clauses preventing the cross-border provision of pay-TV services.

The Commission has concerns relating to contractual clauses in certain bilateral agreements between six major film studios, including Paramount Pictures, and Sky UK under which the studios license their output of films over a certain period of time for pay-TV to Sky UK. These clauses appear to prevent Sky UK from allowing EU consumers located elsewhere to access, via satellite or online, pay-TV services available in the UK and Ireland. Some agreements also contain clauses requiring the 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. The Commission informed the six major film studios and Sky UK of these concerns in a Statement of Objections in [July 2015](#).

The Commission's preliminary view, as outlined in the Statement of Objections, is that these clauses grant 'absolute territorial exclusivity' to Sky UK and/or other broadcasters, and that they eliminate cross-border competition between pay-TV broadcasters and partition the Single Market across national borders.

Proposed commitments

To address the Commission's competition concerns, Paramount Pictures has offered the following commitments, which would apply throughout the European Economic Area (EEA):

1. When licensing its film output for pay-TV to a broadcaster in the EEA, Paramount Pictures would not (re)introduce contractual obligations, which prevent or limit a pay-TV broadcaster from responding to unsolicited requests from consumers within the EEA but outside of the pay-TV broadcaster's licensed territory (No "Broadcaster Obligation");
2. When licensing its film output for pay-TV to a broadcaster in the EEA, Paramount Pictures would not (re)introduce contractual obligations, which require Paramount to prohibit or limit pay-TV broadcasters located outside the licensed territory from responding to unsolicited requests from consumers within the licensed territory (No "Paramount Obligation");
3. Paramount Pictures would not seek to bring an action before a court or tribunal for the violation of a Broadcaster Obligation in an existing agreement licensing its film output for pay-TV;
4. Paramount Pictures would not act upon or enforce a Paramount Obligation in an existing agreement licensing its film output for pay-TV.

The commitments would apply for a period of five years and cover both standard pay-TV services and, to the extent that they are included in the licence(s) with a broadcaster, also subscription video-on-demand services. The commitments would cover both online services and satellite broadcast services.

A summary of the proposed commitments has been published in the [EU's Official Journal](#). Interested parties can submit comments within one month from the date of publication. The full text of the commitments will be available on the [case website](#).

Background

The Commission opened formal antitrust proceedings to investigate contractual clauses in agreements licensing its film output for pay-TV between Sky UK and major film studios in January 2014. In July 2015, the Commission adopted a Statement of Objections taking the preliminary view that certain clauses in the agreements licensing its film output for pay-TV between six major film studios and Sky UK restricted, inter alia, passive sales of Sky UK's pay-TV services.

The Commission's investigation is continuing regarding the conduct of Disney, NBCUniversal, Sony, Twentieth Century Fox, Warner Bros and Sky.

Article 101 of the Treaty on the Functioning of the European Union (TFEU) and Article 53 of the EEA

Agreement prohibit agreements and concerted practices which may affect trade and prevent or restrict competition. Article 9(1) of Regulation 1/2003 enables undertakings that are concerned by a Commission investigation to offer commitments in order to meet the Commission's concerns and empowers the Commission to make such commitments binding on the undertakings by decision. Article 27(4) of Regulation 1/2003 requires that before adopting such decision the Commission shall provide interested third parties with an opportunity to comment on the offered commitments.

If the market test indicates that the commitments are a satisfactory way of addressing the Commission's competition concerns, the Commission may adopt a decision making the commitments legally binding on Paramount Pictures (under Article 9 of the EU's antitrust Regulation 1/2003). Such a decision would not conclude that there is an infringement of EU antitrust rules but legally binds Paramount Pictures to respect the commitments it has offered.

If a company breaks such commitments, the Commission can impose a fine of up to 10% of the company's worldwide turnover, without having to find an infringement of the EU antitrust rules.

More information, including the full version of the commitments is available on the Commission's [competition website](#), in the [public case register](#) under the case number [40023](#).

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