

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

The Commission's concerns relate to contractual clauses in certain bilateral agreements between six major film studios, including The Walt Disney Company ("Disney"), and the pay-TV broadcaster 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 outside the UK and Ireland to access 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.

In a Statement of Objections addressed to the six studios and Sky UK in [July 2015](#), the Commission took the preliminary view that these clauses restrict broadcasters' ability to accept unsolicited requests from consumers located outside the licenced territory (so called "passive sales") and, as a result, may eliminate cross-border competition between pay-TV broadcasters and partition the EU's Single Market across national borders.

Specifically with regard to Disney's output agreement with Sky UK, the Commission's concerns relate only to online transmission of pay-tv services.

Proposed commitments

Disney has decided to offer commitments to address the Commission's competition concerns. These commitments are similar to those offered by Paramount in [April 2016](#) to address the Commission's competition concerns, which were accepted and made legally binding in [July 2016](#). Disney has offered the following commitments, which would apply throughout the European Economic Area (EEA):

1. When licencing its film output for pay-TV to a broadcaster in the EEA, Disney 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 the broadcaster's licensed territory (no "Broadcaster Obligation").
2. When licensing its film output for pay-TV to a broadcaster in the EEA, Disney would not (re)introduce contractual obligations which require Disney to prohibit or limit a pay-TV broadcaster located outside the broadcaster's licensed territory from responding to unsolicited requests from consumers within the licenced territory (no "Studio Obligation").

3. Disney would not seek to bring any action before a court or tribunal for the violation of a Broadcaster and/or Studio Obligation, as applicable, in an existing agreement licensing its output for pay-TV.
4. Disney would not act upon or enforce any Broadcaster and/or Studio Obligation to which is subject in an existing agreement licensing its 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 cover both satellite broadcast services and online services.

The proposed commitments concern Disney, its successors and all of the current and future subsidiaries over which it exercises sole control within the meaning of Council Regulation (EC) No 139/2004.

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

In [July 2015](#), the Commission sent a Statement of Objections to six studios (Disney, NBCUniversal, Paramount Pictures, Sony, Twentieth Century Fox and Warner Bros) and the pay-TV broadcaster Sky UK.

In [April 2016](#), Paramount offered commitments to address the Commission's competition concerns. The commitments were accepted and made legally binding in [July 2016](#). More information on Paramount's commitments is available on the Commission's [competition website](#).

The Commission's investigation continues regarding the conduct of NBCUniversal, Sony Pictures, Fox, Warner Bros and Sky UK.

[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 companies investigated by the Commission to offer commitments in order to meet the Commission's concerns and empowers the Commission to make such commitments binding on the companies. 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 Disney (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 Disney 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 [AT.40023](#).