



Antitrust: Commission accepts commitments by Disney, NBCUniversal, Sony Pictures, Warner Bros. and Sky on cross-border pay-TV services

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The European Commission has made commitments offered by Disney, NBCUniversal, Sony Pictures, Warner Bros. and Sky legally binding under EU antitrust rules. These commitments address the Commission's concerns regarding certain clauses in these studios' film licensing contracts for pay-TV with Sky UK.

These clauses prevented Sky UK from allowing EU consumers outside the UK and Ireland to subscribe to Sky UK's pay TV services to access films via satellite or online. They also required NBCUniversal, Sony Pictures and Warner Bros. to ensure that broadcasters other than Sky UK are prevented from making their pay-TV services available in the UK and Ireland.

Disney, NBCUniversal, Sony Pictures and Warner Bros. have now committed not to apply these clauses in existing film licensing contracts for pay-TV with any broadcaster in the European Economic Area (EEA). They have also committed to refrain from (re)introducing such clauses in film licensing contracts for pay-TV with any broadcaster in the EEA.

Similarly, **Sky** will neither apply existing clauses nor (re)introduce new ones in its film licensing contracts for pay-TV with Disney, Fox, NBCUniversal, Paramount Pictures, Sony Pictures and Warner Bros.

The Commission's concerns

US film studios typically license audio-visual content to a single pay-TV broadcaster in each Member State (or combined for a few Member States with a common language).

The Commission sent a Statement of Objections [in July 2015](#) setting out its preliminary view that certain clauses in film licensing contracts for pay-TV between Disney, Fox, NBCUniversal, Paramount Pictures, Sony Pictures, Warner Bros. and Sky UK breach EU antitrust rules. These clauses (a) required Sky UK to block access to the studios' films through its online pay-TV services (so-called "geo-blocking") and/or through its satellite pay-TV services to consumers outside its licensed territory (UK and Ireland); and (b) required some of the studios to ensure that broadcasters outside the UK and Ireland are prevented from making their pay-TV services available in the UK and Ireland.

Such clauses restrict the ability of broadcasters to accept unsolicited requests (so-called "passive sales") for their pay-TV services from consumers located outside their licensed territory. The Commission had concerns that this may eliminate cross-border competition between pay-TV broadcasters and partition the EU's Single Market along national borders.

The concerns identified by the Commission regarding the studios' film licensing contracts for pay-TV are specific to this case. These licensing contracts' economic and legal context was essential for the Commission's assessment. That assessment can therefore not be extended to similar clauses that form part of a different economic and legal context.

The commitments

In [November 2018](#) and in [December 2018](#), Disney, NBCUniversal, Sony Pictures, Warner Bros. and Sky offered commitments aimed to address the Commission's concerns. The Commission consulted market participants to verify the appropriateness of the proposed commitments.

In light of the results of this market test, the Commission is satisfied that the commitments offered by **Disney, NBCUniversal, Sony Pictures and Warner Bros.** address its concerns, and has made them legally binding on the studios:

1. When licencing its film output for pay-TV to a broadcaster in the EEA each committing studio, each committing studio will not (re)introduce contractual obligations that prevent such pay-TV broadcasters from providing cross-border passive sales to consumers that are located in the EEA but outside of the broadcasters' licensed territory (no "**Broadcaster Obligation**");

2. When licensing its film output for pay-TV to a broadcaster in the EEA, each committing studio will not (re)introduce contractual obligations that require the studios to prevent other pay-TV broadcasters located in the EEA from providing passive sales to consumers located in the licensed territory (no "**Studio Obligation**");
3. Each committing studio will not seek to enforce or bring an action before a court or tribunal for the violation of a Broadcaster Obligation and/or Studio Obligation, as applicable, in an existing agreement licensing its output for pay-TV.
4. Each committing studio will not enforce or honour any Broadcaster Obligation and/or Studio Obligation in an existing agreement licensing its output for pay-TV.

Similarly, in light of the results of this market test, the Commission is satisfied that the commitments offered by **Sky** address its concerns, and has made them legally binding on Sky:

1. Sky will neither (re)introduce Broadcaster Obligations nor Studio Obligations in agreements licensing the output for pay-TV of Disney, Fox, NBCUniversal, Paramount Pictures, Sony Pictures and Warner Bros.; and
2. Sky will not seek to enforce Studio Obligations or honour Broadcaster Obligations in agreements licensing the output for pay-TV of Disney, Fox, NBCUniversal, Paramount Pictures, Sony Pictures and Warner Bros.

The commitments will apply throughout the EEA for a period of five years. They cover both online and satellite pay-TV services and, to the extent that they are included in the licence(s) with a pay-TV broadcaster, they also cover subscription video-on-demand services. The commitments also contain a non-circumvention clause, as well as clauses on the review of the commitments and the appointment of a monitoring trustee.

All current and future subsidiaries of the committing parties are covered by the commitments. This means that, following the acquisition of Fox by Disney, the commitments will also apply to Fox.

The commitments are without prejudice to rights conferred on the committing studios under the "[Portability Regulation](#)" or under copyright law. They also do not affect the rights of the studios or a pay-TV broadcaster to decide unilaterally to employ geo-filtering technology.

Background

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

In [December 2018](#), the General Court of the European Union fully upheld the Commission's decision to accept commitments from Paramount (Case T-873/16 Groupe Canal+). In particular, the General Court confirmed the Commission's preliminary concerns that the Broadcaster and Studio Obligations contained in Paramount's film licensing contract with Sky infringed Article 101 TFEU by eliminating cross-border competition between pay-TV broadcasters.

[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 of the EU's Antitrust Regulation (Regulation 1/2003) allows the Commission to conclude antitrust proceedings by accepting commitments offered by a company. Such a decision does not reach a conclusion on whether EU antitrust rules have been infringed but legally binds the company to respect the commitments.

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. A policy brief on commitment decisions under Article 9 is available [here](#).

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](#).

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