

## **Anticipated acquisition by Liberty Media Corporation of Formula 1 Group**

### **Decision on relevant merger situation and substantial lessening of competition**

**ME/6641/16**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 16 December 2016. Full text of the decision published on 6 January 2017.

**Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.**

#### **SUMMARY**

1. Liberty Media Corporation (**Liberty Media**) has agreed to acquire Formula 1 Group (**F1 Group**) (the **Merger**). Liberty Media and F1 Group are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties will cease to be distinct as a result of the Merger, that the turnover test is met and that, accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. F1 Group is responsible for the promotion and exploitation of the rights related to the Fédération Internationale de l'Automobile (**FIA**) Formula One World Championship (**F1**). Liberty Media owns interests in a range of media, communications and entertainment businesses.
4. Mr John Malone holds shares in, and is on the board of, Liberty Media, Liberty Global plc (**Liberty Global**) and Discovery Communications (**Discovery**), which own businesses in the media and broadcasting sectors (including Virgin Media and Eurosport) and hold interests in Formula E, an all-electric motorcar racing series, approved and regulated by the FIA. On a cautious basis, the

CMA has treated these companies as being under common control for the purpose of its competitive assessment.

5. On the above basis, the Parties to the Merger overlap horizontally through F1 Group and Formula E and have a vertical link between F1 Group and Formula E on the one hand and broadcaster Eurosport and pay TV provider Virgin Media on the other.
6. The CMA therefore assessed the Merger within the following frames of reference:
  - (a) the upstream supply of promotional activities for motorsports events in the UK; and
  - (b) the downstream broadcasting of sports events (potentially segmented by 'free-to-air' (**FTA**) and pay TV, and by type of content) in the UK.
7. With regard to horizontal unilateral effects in the upstream supply of promotional activities for motorsports events in the UK, the CMA found that Formula E does not pose a material constraint on F1 Group, having regard to Formula E's very minor share of viewed hours and fees, as well as third party comments that Formula E and F1 are not substitutes.
8. With regard to vertical input foreclosure effects in the downstream broadcasting of sports events in the UK, third party evidence showed that the rights to F1 are valuable and broadcasters told the CMA that obtaining the rights to F1 would have a material impact on their viewing figures and subscriptions. However, the CMA found that F1 rights are not sufficiently important to impact downstream broadcasters' ability to compete effectively in the UK. The CMA therefore believes that the Parties would not have the ability to engage in input foreclosure by raising the fee for, or refusing to supply, F1 TV rights to downstream broadcasters.
9. For these reasons, the CMA does not believe that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) in any market or markets.
10. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

11. F1 Group is responsible for the promotion of F1 and the exploitation of the commercial rights related to F1. The turnover of F1 Group in FY 2015 was around [X] worldwide and around [X] in the UK.<sup>1</sup>
12. Liberty Media owns interests in a range of media, communications and entertainment businesses. The turnover of Liberty Media in FY 2015 was £3.1 billion worldwide.<sup>2</sup>

### *Other relevant companies*

13. A relevant merger situation is created when two enterprises cease to be distinct, which is defined as two enterprises being brought under common ownership or control. The ability to exercise material influence is the lowest level of control that can give rise to a relevant merger situation.<sup>3</sup> The CMA may treat material influence as equivalent to 'control' for the purposes of establishing whether enterprises have been brought under common ownership or control.
14. A finding of material influence may be based on the ability to influence policy through exercising votes at shareholders' meetings, together with, in some cases, any additional supporting factors. Material influence may also arise as a result of the ability to influence the board, and/or through other arrangements: that is, without being able to block votes at shareholders' meeting. Although there is no presumption of material influence below 25%,<sup>4</sup> the CMA may examine any shareholding of over 15% (or exceptionally lower) in order to assess whether the holder might be able materially to influence the target's policy.<sup>5</sup>
15. Mr Malone is the chairman of Liberty Media and holds shares with a voting power of around [X]% in that company.<sup>6</sup> Whilst under US law he is not able

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<sup>1</sup> Revenue was converted from USD to GBP at an average annual exchange rate of \$1.00 = £0.6544 for 2015. (Source: OANDA exchange rate).

<sup>2</sup> Revenue was converted from USD to GBP at an average annual exchange rate of \$1.00 = £0.6544 for 2015. (Source: OANDA exchange rate).

<sup>3</sup> Mergers: Guidance on the CMA's jurisdiction and procedure, paragraphs 4.13 to 4.14.

<sup>4</sup> Given the nature of the decisions that typically will require a special resolution, and which the holder could therefore block, a share of voting rights of over 25% is likely to be seen as conferring the ability materially to influence policy, even when all the remaining shares are held by only one person (Mergers: Guidance on the CMA's jurisdiction and procedure, paragraph 4.19 to 4.20).

<sup>5</sup> Mergers: Guidance on the CMA's jurisdiction and procedure, paragraph 4.20.

<sup>6</sup> Mr Malone has an approximate equity stake of [X]% in Liberty Media.

to block special resolutions,<sup>7</sup> he may be able to influence materially that company's strategic direction through his chairmanship and his position in the industry more generally. On a cautious basis and for the purposes of its assessment, the CMA has treated Liberty Media as under the control (whether solely or jointly with other entities) of Mr Malone.

16. In carrying out its assessment, the CMA must first identify all material overlaps between, on the one hand, the acquiring entity and, on the other, the target. As part of this process, the CMA identified two other companies over which Mr Malone may have control and which would therefore cease to be distinct from F1 Group as a result of the Merger.
17. First, Mr Malone is Chairman of Liberty Global and holds shares with a voting power of around [REDACTED]% in that company. This shareholding may give Mr Malone material influence over Liberty Global as he may be able to block special resolutions of that company, having regard to the distribution of shares and historic voting patterns in that company. Liberty Global also:
  - (a) wholly owns and operates cable networks including **Virgin Media plc**, a UK-based provider of fixed and mobile telephone, television and broadband services; and
  - (b) holds a minority interest in **Formula E**, with voting power of [REDACTED]%.
18. Second, Mr Malone is a board member of Discovery, a Nasdaq-listed company registered in Delaware, and holds shares with a voting power of around [REDACTED]% in that company.<sup>8</sup> Similar to Liberty Media, whilst under US law Mr Malone is not able to block Discovery's special resolutions,<sup>9</sup> he may be able to influence materially that company's strategic direction through his board representation and his position in the industry more generally. Discovery also:
  - (a) wholly owns **Eurosport**, a broadcaster of sports events active across the EEA, including in the UK; and
  - (b) in common with Liberty Global, has a minority interest in **Formula E**, with voting power of [REDACTED]%.<sup>10</sup>
19. In light of Mr Malone's shareholdings and voting power in each of these companies, the CMA has on a cautious basis assumed that Mr Malone has

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<sup>7</sup> This is because Liberty Media is a company formed under the laws of Delaware, which do not incorporate the equivalent of special resolutions.

<sup>8</sup> [REDACTED].

<sup>9</sup> Discovery is also a company formed under the laws of Delaware.

<sup>10</sup> [REDACTED].

material influence over each of Liberty Media, Liberty Global, Virgin Media, Discovery, Eurosport and Formula E and has therefore treated, for the purpose of its competitive assessment, each of these companies as ceasing to be distinct from F1 Group as a result of the Merger. However, the CMA did not need to reach a firm view on this point given its finding that no realistic prospect of an SLC arises as a result of the Merger on any plausible basis.

20. On the above basis, the CMA identified the following overlaps between the activities of the Parties to the Merger:
  - (a) a horizontal overlap between F1 Group and Formula E; and
  - (b) a vertical link between F1 Group and Formula E on the one hand and broadcaster Eurosport and pay TV provider Virgin Media on the other.

## **Transaction**

21. On 7 September 2016, Liberty Media acquired 18.7% of F1 Group and agreed to purchase the remainder of F1 Group, conditional on a number of closing conditions, including regulatory approvals.
22. The Parties informed the CMA that the Merger is also the subject of review by competition authorities in Austria, Brazil, Russia, Spain and Portugal.

## **Jurisdiction**

23. As a result of the Merger, the enterprises of Liberty Media and F1 Group will cease to be distinct.
24. The UK turnover of F1 Group exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
25. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
26. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 7 November 2016 and the statutory 40 working day deadline for a decision is therefore 5 January 2017.

## **Counterfactual**

27. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the

counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>11</sup>

28. In this case, there is no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## Frame of reference

29. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>12</sup>

## Product scope

30. In CVC/SLEC,<sup>13</sup> the European Commission (**Commission**) considered that a hypothetical market for the overall promotion of international motorsport series would not provide a basis for a meaningful analysis. Instead, the Commission identified a number of different market participants who deal with F1 Group, which the Commission used as a basis for identifying areas of concern: motorsport regulators, teams/manufacturers, advertisers, local promoters (and circuit owners), and television broadcasters (potentially segmented between FTA and pay TV).
31. In the present case, the Parties submitted that the distinction previously drawn by the Commission in relation to FTA and pay TV is not relevant as pay TV has grown substantially in popularity. In addition, the Parties noted that F1 currently has a mixed presence on both FTA and pay TV (though it will be

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<sup>11</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

<sup>12</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>13</sup> Case No COMP/M.4066 - CVC / SLEC, 20 March 2006.

exclusively on pay TV from 2019), as does Formula E.<sup>14</sup> The Parties also said that it is not appropriate to segment the market by the type of content as broadcasters considering whether to acquire the rights for F1 will also consider other major sports. The Parties suggested that a broadcaster's main concern is to attract viewers and/or subscribers, and all TV content, sports-related or non-sports related, is interchangeable in this respect.

32. However, given the significance of TV audiences to the success of motorsports events, the CMA believes that the views of broadcasters provide evidence regarding the constraint F1 Group and Formula E pose on one another which is relevant to all market participants (see paragraph 30). Therefore, the CMA assessed, on a cautious basis, the horizontal overlap between F1 Group and Formula E in a frame of reference for the supply of promotional activities for motorsports events (including to broadcasters).
33. The CMA has also assessed, on a cautious basis, the potential vertical link between the Parties by considering the downstream broadcasting of sports events (potentially segmented by FTA and pay TV, and by type of content).

#### *Conclusion on product scope*

34. For the reasons set out above, the CMA has assessed the impact of the Merger in the following frames of reference:
  - (a) the upstream supply of promotional activities for motorsports events; and
  - (b) the downstream broadcasting of sports events (potentially segmented by FTA and pay TV, and by type of content).
35. It was not necessary for the CMA to reach a conclusion on the product frame of reference since, as set out below, no competition concerns arise on any plausible basis.

#### *Geographic scope*

36. In CVC/SLEC, the Commission stated that the majority of broadcasters are domestic businesses with a focus on national programming. Although the signal transmitted by broadcasters is sometimes received in other countries, the rights to broadcast an event are purchased on a country-by-country basis,

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<sup>14</sup> In 2016, Channel 4 (a FTA broadcaster) has non-exclusive live rights to 10 of 21 F1 races, and highlights of the remaining 11 races; and Sky (a pay TV broadcaster) has live rights for all F1 races. From 2019, Sky will have the exclusive live rights to all F1 races. Similarly, Formula E is broadcast on both FTA (live on Channel 5) and pay TV (highlights on BT Sport).

due to characteristics of distribution which are national as a result of national regulatory regimes, language barriers and cultural factors.

37. In the present case, neither the Parties nor any third party indicated that the geographic frame of reference should be anything other than national.
38. For these reasons, the CMA has assessed the impact of the Merger in the UK.

### ***Conclusion on frame of reference***

39. For the reasons set out above, on a cautious basis, the CMA has assessed the impact of the Merger in the following frames of reference:
  - (a) the upstream supply of promotional activities for motorsports events in the UK; and
  - (b) the downstream broadcasting of sports events (potentially segmented by FTA and pay TV, and by type of content) in the UK.

## **Competitive assessment**

### ***Horizontal unilateral effects***

40. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>15</sup> Horizontal unilateral effects are more likely when the merger parties are close competitors. On a cautious basis, the CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the promotion of motorsports events.
41. The CMA investigated F1 Group's and Formula E's commercial relationships with broadcasters and considered whether the loss of competition between F1 and Formula E could lead to higher prices for TV rights to those events.
42. Given the significance of TV audiences to the success of these motorsports events, the CMA believes that the views of broadcasters provide useful

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<sup>15</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.



evidence regarding the constraint F1 Group and Formula E pose on one another in other customer groups (such as advertisers and attendees).<sup>16</sup>

### *Shares of supply*

43. The Parties submitted an analysis of [REDACTED] UK TV viewership data covering all broadcasts of sports content.<sup>17</sup> This data showed that F1 and Formula E had a share of viewed hours of [5-10]% and [0-5]% respectively of all major sports events, and [80-90]% and [0-5]% respectively of all major motorsports events.
44. The Parties also submitted estimates of broadcaster spending for major sports events in 2015, using [REDACTED].<sup>18</sup> Formula E was not included in the Parties' estimates, indicating that broadcaster spending on this content is very small.
45. Using customer information, the CMA found that:
  - (a) Channel 5 [REDACTED]; and
  - (b) BT Sport [REDACTED].
46. Based on this information, the CMA estimated that Formula E accounts for less than [REDACTED]% of all revenues generated from the supply of TV rights to motorsports events in the UK while F1 Group represents approximately [REDACTED]% of revenues.

### *Closeness of competition*

47. The Parties did not make any submissions on the closeness of competition between F1 and Formula E.
48. No third party broadcaster (FTA or pay TV) submitted that Formula E a substitute for F1. Broadcasters indicated that Formula E has a [REDACTED].<sup>19</sup> All broadcasters indicated that [REDACTED].

### *Conclusion on horizontal unilateral effects*

49. For the reasons set out above, the CMA believes that F1 Group and Formula E are not currently close competitors and provide little competitive constraint on each other in relation to the supply of promotional activities for motorsports

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<sup>16</sup> Given the differences in organisational structures, venues and teams/manufacturers involved in F1 and Formula E, the CMA did not identify a plausible theory of harm in relation to the Parties' engagement with motorsport regulators, teams or promoters.

<sup>17</sup> Annex 12 (Updated) [REDACTED].

<sup>18</sup> Annex 20.

<sup>19</sup> Two broadcasters expressed a concern that [REDACTED]. However, the CMA did not see the potential for competitive harm from such a strategy: [REDACTED].

events to broadcasters in the UK. The CMA believes that the clear evidence from broadcasters indicates that there is at present a similar lack of competitive constraint between F1 Group and Formula E for other relevant customer groups (such as advertisers and attendees) as well.

50. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of promotional activities for motorsports events in the UK.

### ***Vertical effects***

51. Vertical effects may arise when a merger involves firms at different levels of the supply chain. Vertical mergers may be competitively benign, or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.<sup>20</sup>
52. The CMA's approach to assessing vertical theories of harm is to analyse the ability of the merged entity to foreclose competitors, the incentive of it to do so, and the overall effect of the strategy on competition.<sup>21</sup>
53. In the present case, the CMA has assessed whether Liberty Global or Discovery could engage in input foreclosure, either by raising the fee for, or refusing to supply, F1 TV rights to downstream competitors of Eurosport and Virgin TV (such as Sky, BT, and other broadcasters, including FTA broadcasters).

### ***Assessment***

54. The Parties submitted that F1 rights are not a critical input for downstream broadcasters to be able to compete effectively in the UK. The Parties said that broadcasters have a wide range of choices, and a large amount of other sports content is available. In particular, the Parties noted that:
- (a) within the past decade, there have been three occasions when a UK broadcaster has chosen to give up F1 content (even prior to the end of the relevant contract): ITV in 2009, and the BBC in 2012 and 2015.

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<sup>20</sup> In relation to this theory of harm 'foreclosure' means either to foreclose a rival or to substantially competitively weaken a rival.

<sup>21</sup> [Merger Assessment Guidelines](#), paragraph 5.6.6.

- (b) BT Sport, a relatively new sports broadcaster (which entered in August 2013), was able to grow rapidly without providing F1 content, achieving viewership equivalent to 18% of Sky Sports' viewership in 2015, after less than two years of operation.
- (c) Sky had recently agreed a contract with F1 Group for the exclusive live broadcasting rights to all F1 races from 2019 until 2024. [REDACTED].
55. Third party broadcasters told the CMA that F1 is very popular for a small group of viewers. Some pay TV broadcasters stated that, for certain consumers, motorsports generally and F1 in particular are likely to be an important factor in their pay TV subscription decisions. In particular:
- (a) Two broadcasters said that F1 attracts an [REDACTED].
- (b) One broadcaster submitted that adding exclusive live F1 rights to its proposition could lead to [REDACTED].
- (c) One broadcaster told the CMA that the Merger could [REDACTED].
- (d) Two broadcasters expressed concerns regarding the [REDACTED], with one broadcaster suggesting that, [REDACTED].
56. One third party raised concerns that, post-Merger, [REDACTED]. However, the CMA notes that [REDACTED].
57. The Parties submitted an analysis of [REDACTED] UK TV viewership data covering all broadcasts of sports content. This data showed that Premier League football was by far the most popular regular sport with a share of supply of [10-20]% compared with [5-10]% for F1. Other regular sports, such as Wimbledon and international cricket, obtain similar shares of supply to F1.
58. In its recent review of Sky's 'wholesale must-offer' obligation in relation to Sky Sports, Ofcom found that F1 was the main reason for subscribing to Sky Sports for only 4% of subscribers (compared to 27% who said that Premier League football was the main reason).<sup>22</sup> One broadcaster acknowledged that, from a broadcast programming perspective, F1 content could be substituted for other sports, and even non-sports, content.
59. The CMA notes that live F1 rights have recently been awarded on a long-term exclusive basis to Sky for the period 2019 to 2024. For this reason, and on the basis of the evidence it has seen, the CMA believes that the Parties would not have the ability to foreclose its broadcasting competitors from pay TV (or a

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<sup>22</sup> Ofcom: [Review of the pay TV wholesale must offer obligation](#), published on 19 November 2016.

subset of pay TV, eg sports pay TV) until at least 2024. Moreover, given Ofcom's findings that F1 is not 'key content' for a sports pay TV subscription, the CMA believes that this content would be unlikely, on its own, to confer currently the ability to foreclose competitors in pay TV (or a subset of pay TV) even after 2024.

### *Conclusion on vertical effects*

60. For the reasons set out above, the CMA believes that the Parties have no ability to engage in input foreclosure in relation to the supply of TV rights for F1. As the Parties do not have the ability to successfully engage in input foreclosure, it has not been necessary for the CMA to establish whether they would have the incentive to do (or attempt to do) so or to assess the effect of attempting to do so.
61. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC in the downstream broadcasting of sports events in the UK as a result of vertical effects in relation to the supply of TV rights for F1.

### **Barriers to entry and expansion**

62. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC.<sup>23</sup>
63. In the present case, the CMA has not considered barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

### **Third party views**

64. The CMA contacted customers and competitors of the Parties. Most customers did not raise concerns regarding the Merger. Third party comments have been taken into account where appropriate in the competitive assessment.

### **Decision**

65. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.

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<sup>23</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

66. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Andrew Wright**  
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**Competition and Markets Authority**  
**16 December 2016**