European Commission - Press release

Mergers: Commission clears 21st Century Fox's proposed acquisition of Sky under EU merger rules*

Brussels, 7 April 2017

The European Commission has approved unconditionally under the EU Merger Regulation the proposed acquisition of Sky by Twenty-First Century Fox, a US-based diversified global media company. The Commission concluded the transaction would raise no competition concerns in Europe.

The proposed transaction would combine **Sky plc (Sky)**, the leading pay-TV operator in Austria, Germany, Ireland, Italy and the UK and **Twenty-First Century Fox, Inc (Fox)**, one of the six major Hollywood film studios (20th Century Fox), as well as a TV channel operator (Fox, National Geographic).

Fox and Sky are mainly active in different markets in the Austria, Germany, Ireland, Italy and the UK. They compete with each other only to a limited extent, mainly in the acquisition of TV content and in the wholesale supply of basic pay-TV channels.

The Commission found that the proposed transaction would lead to only a limited increase in Sky's existing share of the markets for the acquisition of **TV content** as well as in the market for the **wholesale supply of TV channels** in the relevant Member States.

Given that the merging companies are mainly active at different levels of the market, the Commission's assessment focused on whether, as a result of the proposed transaction:

- Fox would be able to prevent or significantly limit access by Sky's competitors to its films and other TV content, as well as to its TV channels. The Commission concluded that these possible concerns were not founded. This is because the parties' audience shares remain limited and pay-TV distributors would continue to have access to content from Fox's competitors and alternative channels with comparable programming and audiences in the relevant Member States.
- Sky would have the incentive to cease purchasing content from Fox's competitors. The Commission found that this was unlikely as it would reduce the quality of Sky's product offering.
- Sky could prevent competing channels from accessing its platform. The investigation found that the merged companies' ability to shut out Fox's rivals was significantly mitigated by existing regulations in the UK, Germany and Austria. In addition, competitors that could have been targeted for exclusion are either contractually protected for a sufficient period of time or are not dependent on Sky's retail platform in the relevant Member States.

Based on the results of its market investigation, the Commission concluded that the proposed transaction would raise no competition concerns.

UK media plurality review and Article 21 of the EU Merger Regulation

The Commission has exclusive jurisdiction to assess the impact of the proposed transaction on competition in the various markets affected within the European Economic Area. However, Article 21 of the EU Merger Regulation recognises that Member States may take appropriate measures, including prohibiting proposed transactions, to protect other legitimate interests, such as media plurality.

The purpose of, and legal frameworks for, competition assessments and media plurality assessments are very different. The competition rules focus broadly on whether consumers would be faced with higher prices or reduced innovation as a result of a transaction. A media plurality assessment typically looks at wider concerns about whether the number, range and variety of persons with control of media enterprises is sufficiently diverse.

The UK Secretary of State for Culture, Media and Sport issued a European intervention notice on 16 March 2017. This notice requires the relevant UK authorities to investigate and report by 16 May 2017 on whether the proposed transaction is, or may be, against the public interest.

As the Commission's findings concern solely the competition aspects of the proposed transaction, today's clearance decision is without prejudice to the UK's ongoing media plurality review of the proposed transaction.

Merger control rules and procedures

The transaction was notified to the Commission on 3 March 2017.

The Commission has the duty to assess mergers and acquisitions involving companies with a turnover above certain thresholds (see Article 1 of the Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has a total of 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

More information will be available on the competition website, in the Commission's public case register under the case number M.8354.

* updated on 07/04/2017, 16:55 CET: amended paragraph to show correct UK Secretary of State and purpose of intervention notice.

IP/17/902

Press contacts:

Ricardo CARDOSO (+32 2 298 01 00)
Maria TSONI (+32 2 299 05 26)

General public inquiries: Europe Direct by phone 00 800 67 89 10 11 or by email