

# Anticipated joint venture between Warner Bros. Discovery, Inc and BT Group plc

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

**ME/6989/22**

CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 22 July 2022. Full text of the decision published on 27 September 2022.

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

### SUMMARY

1. On 11 May 2022, Warner Bros. Discovery, Inc. (**WBD**) and BT Group plc (**BT**) entered into an agreement to create a 50:50 joint venture (the **Merger**), which will combine WBD's audio-visual (**AV**) sports content business in the UK and Ireland (**Eurosport UK&I**) and BT's AV sports content business (**BT Sport**).<sup>1</sup> Eurosport UK&I and BT Sport are together referred to as the **JV**. WBD and BT are referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) has considered whether, as a result of horizontal unilateral effects, the Merger may give rise to a substantial lessening of competition (**SLC**) in (i) the acquisition of broadcasting rights for AV sports content (**sports rights**) for the UK; (ii) the wholesale supply of AV sports content in the UK; and (iii) the retail supply of AV sports content in the UK.
3. In relation to the acquisition of sports rights for the UK, the evidence indicates that BT Sport has a wider strategic focus than Eurosport UK&I (in that BT Sport acquires both high value 'premium' sports content (namely, rights for the Premier

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<sup>1</sup> Final Merger Notice submitted by WBD and British Telecommunications plc dated 13 June 2022 (**FMN**), paragraph 155. BT Sport does not supply sports content at the wholesale level in countries outside of the UK and Ireland or at the retail level in countries outside the UK.

League and Champions League football) and other, lower value 'non-premium' AV sports content, while Eurosport UK&I focuses solely on non-premium AV sports content). Within the acquisition of rights for non-premium AV sports content, Eurosport UK&I has a very small presence and the Parties are not close competitors. A range of competitors (in particular, the market leader, Sky) will continue to compete with the JV to acquire rights for non-premium AV sports content for the UK post-Merger. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects through the acquisition of sports rights for the UK.

4. In relation to the wholesale supply of AV sports content, the evidence indicates that BT Sport and Eurosport UK&I are not close competitors, and that the JV will face competition from Sky as well as a degree of competitive constraint from over-the-top (**OTT**) providers.<sup>2</sup>
5. Similarly, in relation to the retail supply of AV sports content, the evidence indicates that BT Sport and Eurosport UK&I are not close competitors, and that the JV will continue to face competition from Sky and, increasingly, OTT providers such as Amazon.
6. The CMA therefore believes that the Merger does not give rise to a realistic prospect of a SLC as a result of horizontal unilateral effects.
7. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

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<sup>2</sup> Over-the-top refers to the transmission of AV content over the open internet without the involvement of an internet service provider to personal computers, smart TVs, games consoles and mobile devices. In this decision, the CMA refers to providers that only supply OTT services as **OTT providers**.

# ASSESSMENT

## PARTIES

### WBD

8. WBD is a global media company, formed via the combination of Discovery, Inc. (**Discovery**) and WarnerMedia LLC (**WarnerMedia**)<sup>3</sup> and headquartered in New York. WBD provides AV content worldwide across multiple distribution platforms and covering a variety of genres.<sup>4</sup> WBD's worldwide turnover in the financial year 2021 was £[REDACTED], of which £[REDACTED] was generated in the UK.<sup>5</sup>

### Eurosport UK&I

9. Eurosport UK&I is active at the following levels of the AV sports content supply chain in the UK:
  - (a) **Acquisition of sports rights.** Eurosport UK&I<sup>6</sup> acquires rights from rights holders for use in the supply of AV sports content. Sports rights for the UK held by Eurosport UK&I include the Olympic Games, Tennis Grand Slams (French Open and Australian Open) and Cycling Tours (Giro, Vuelta, Tour de France).<sup>7</sup>
  - (b) **Wholesale supply of AV sports content.** WBD supplies Eurosport UK&I's channels<sup>8</sup> dedicated to sports content, Eurosport 1 and Eurosport 2, to third parties (including Sky, Virgin Media and BT) who distribute those channels to viewers as part of their retail AV content offering.<sup>9</sup>
  - (c) **Retail supply of AV sports content.** WBD supplies Eurosport UK&I AV sports content directly to viewers through the Discovery+ OTT service (**Discovery+**) as

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<sup>3</sup> The merger between WarnerMedia and Discovery completed on 8 April 2022.

<sup>4</sup> FMN, paragraphs 80 to 85.

<sup>5</sup> FMN, Table 6.1.

<sup>6</sup> Post-Merger, the JV will hold or be entitled to the benefit of the sports rights to operate Eurosport UK&I. For certain sports rights held by Eurosport on a pan-European basis, the rights for the UK and Ireland will be sublicensed to the JV. (FMN, paragraphs 32 and 41.3.) In this decision, the CMA refers to the acquisition of sports rights by Eurosport UK&I to refer to the acquisition of sports rights by Eurosport that the JV will hold or be entitled to the benefit of.

<sup>7</sup> FMN, paragraphs 149 to 152, Table 13.1A and Table 13.1B.

<sup>8</sup> WBD will contribute the Eurosport channels that are available in the UK and Ireland, Eurosport 1 and Eurosport 2, to the JV (FMN, paragraph 1). These channels will be referred to as Eurosport UK&I channels in this decision.

<sup>9</sup> WBD supplies these channels on a linear (ie live scheduled) (**linear**) basis. Eurosport UK&I content may also be made available to viewers as part of 'catch up' services offered by the retail supplier. (FMN, paragraphs 223 to 226 and 562.)

part of an entertainments and sports package and the legacy Eurosport Player OTT service.<sup>10</sup>

## BT

10. BT is a UK-based communications services company, active in the provision of fixed-line and mobile communications services, broadband, TV services and managed networked IT services and headquartered in London.<sup>11</sup> BT's worldwide turnover in the financial year 2021 was £21.3 billion, of which £[ ] was generated in the UK.<sup>12</sup>

## BT Sport

11. BT Sport is active at the following levels of the AV sports content supply chain in the UK:
  - (a) **Acquisition of sports rights.** BT Sport acquires rights from rights holders for use in the supply of AV sports content. BT Sport holds rights in relation to a range of sports such as football (including the Premier League and the Champions League), rugby, cricket, motor racing and boxing.<sup>13</sup>
  - (b) **Wholesale supply of AV sports content.** BT supplies BT Sport channels dedicated to sports content (including BT Sport 1, BT Sport 2, BT Sport 2, BT Sport ESPN and BT Sport Ultimate) to third party retail suppliers of AV sports content (namely, Sky and Virgin Media).<sup>14</sup>
  - (c) **Retail supply of AV sports content.** BT Sport is also available directly to end customers via BT's TV services and the BT Sport App.<sup>15</sup>

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<sup>10</sup> In the UK, Discovery+ was launched in July 2021 and Eurosport Player stopped accepting new subscriptions in September 2021 (this content now being available via Discovery+) (FMN, paragraphs 253, 257 and 443 and footnotes 108 and 246). Discovery+ is made available directly and on third party retail offerings (for example on Sky) (FMN, paragraphs 42.2 and 559).

<sup>11</sup> FMN, paragraphs 26 to 27.

<sup>12</sup> FMN, Table 6.1.

<sup>13</sup> FMN, paragraph 155.

<sup>14</sup> BT supplies its channels on a linear basis and, in certain instances, on a video-on-demand (ie access to content at the time of viewers individual request) (**VOD**) basis (FMN, paragraphs 91 and 232). BT Sport content may also be made available to viewers as part of 'catch up' services offered by the retail supplier (FMN, paragraphs 560 to 561).

<sup>15</sup> BT supplies BT Sport in four main ways: (i) as part of a bundled package, in which a BT Sport subscription is made available to consumers or businesses as part of a combined BT TV/communications (ie mobile or broadband) package for a subscription fee (**BT Bundled Package**); (ii) through the BT Sport app, which is made available to viewers directly or via third party retail suppliers for a subscription fee; (iii) directly to viewers on a pay per view (**PPV**) basis (where customers pay a one off fee in order to view a particular

## TRANSACTION

12. The Merger involves the establishment of a new joint venture. Pursuant to the framework agreement signed on 11 May 2022, BT and WBD will acquire shares in two newly incorporated subsidiaries, **JVCo** and **OpCo**.<sup>16</sup> The JVCo and OpCo will together hold the relevant assets and businesses of BT Sport and Eurosport UK&I.<sup>17</sup>
13. The Merger is not subject to review by any other competition authority.<sup>18</sup>

## JURISDICTION

14. As noted above, the Merger involves the creation of a joint venture to which BT and WBD will respectively contribute the BT Sport and Eurosport UK&I businesses. Each of WBD, BT, BT Sport and Eurosport UK&I is an enterprise.
15. Under the JV agreement, WBD and BT will have an equal amount of share capital, an equal amount of directors and control of the board of JVCo will be shared on a 50 / 50 basis between the Parties.<sup>19</sup> As a result of the Merger, both Parties will have the ability post-Merger to materially influence the behaviour of the JV in the marketplace. BT Sport and Eurosport UK&I will therefore cease to be distinct from each other and the Parties together will enjoy common ownership and control of the JV. Whilst neither Party will have sole control over BT Sport or Eurosport UK&I, each Party will acquire material influence in (and cease to be distinct from), the business being contributed by the other (ie BT will acquire the ability to materially influence the commercial policy of Eurosport UK&I and WBD will acquire the ability to materially influence the commercial policy of BT Sport).
16. The combined UK turnover of the businesses being contributed to the JV, namely BT Sport and Eurosport UK&I, exceeds £70 million. In the UK in 2021, BT Sport

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event); and (iv) to commercial premises, such as pubs, hotels or betting shops) via the premise's Sky Box. (FMN, paragraph 260).

<sup>16</sup> BT and WBD will each hold 50% of the ordinary share capital in JVCo. WBD will hold 100% of the issued share capital of OpCo (FMN, paragraph 33.)

<sup>17</sup> JVCo will hold (or be entitled to the benefit of) the sports rights, distribution agreements, advertising agreements and relevant broadcasting licences to operate Eurosport UK&I and BT Sport. OpCo (or another WBD entity) will hold BT Sport's production activities. Further, OpCo and/or WBD will provide production services to JVCo under the terms of an agreed form master services agreement. (FMN, paragraph 32.)

<sup>18</sup> Parties' response to CMA's questions dated 14 July 2022 (**CMA RFI 6**).

<sup>19</sup> Certain reserved matters require approval [X]. (FMN, paragraphs 37 and 38.)

generated turnover of £[X] and Eurosport UK&I generated turnover of £[X].<sup>20</sup> Therefore, the turnover test in section 23(1)(b) of the Act is satisfied.<sup>21</sup>

17. 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.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 1 June 2022 and the statutory 40 working day deadline for a decision is therefore 28 July 2022.

## COUNTERFACTUAL

19. The CMA assesses the prospects for competition with the merger against the competitive situation without the merger (ie the counterfactual).<sup>22</sup> For anticipated mergers the counterfactual may consist of the prevailing conditions of competition, or conditions of competition that involve stronger or weaker competition between the merger firms than under the pre-merger conditions of competition.<sup>23</sup> 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

20. Market definition is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise from the competitive assessment.<sup>24</sup> It involves identifying the most significant competitive alternatives available to customers of the merger firms and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.<sup>25</sup>

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<sup>20</sup> FMN, Table 6.1.

<sup>21</sup> Post-Merger, WBD and BT remain under the same ownership and control. In this scenario, for the purposes of determining whether the turnover test in section 23(1) of the Act is satisfied, the turnover of the enterprise being acquired is calculated by taking the total value of all enterprises ceasing to be distinct and deducting the turnover of those enterprises that remain under the same ownership and control post-merger. [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.54(b).

<sup>22</sup> [Merger assessment guidelines \(CMA129\) – 2021 revised guidance \(Merger Assessment Guidelines\)](#), paragraph 3.1.

<sup>23</sup> [Merger Assessment Guidelines](#), paragraph 3.2.

<sup>24</sup> [Merger Assessment Guidelines](#), paragraph 9.1.

<sup>25</sup> [Merger Assessment Guidelines](#), paragraph 9.2.

21. The CMA has identified the following main overlaps between the Parties' activities in the UK:<sup>26</sup>
- (a) the acquisition of sports rights;
  - (b) the wholesale supply of AV sports content; and
  - (c) the retail supply of AV sports content.

## Product scope

### *Acquisition of sports rights*

22. Rights holders – such as organisers of sporting events, sports associations or promoters (or agencies acting on their behalf) or intermediary agencies which acquire the rights from rights holders in order to sublicense them – license rights to third parties such as BT Sport and Eurosport UK&I. These third parties compete upstream to acquire sports rights from rights holders, and also downstream (at the wholesale and retail levels) to supply AV sports content. The upstream and downstream aspects of competition are linked because being successful downstream also requires, *inter alia*, third parties to acquire the sports rights that are attractive to viewers (and thus drive downstream demand).

### *Parties' submissions*

23. The Parties submitted that the narrowest plausible frames of reference are (i) the acquisition of rights for premium sports content and (ii) the acquisition of rights for non-premium sports content.<sup>27</sup> The Parties suggested that in the UK 'premium' or 'key' content should consist of at least Premier League, Champions League football<sup>28</sup> and Formula 1. This was on the basis that these rights are higher value

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<sup>26</sup> Eurosport UK&I and BT Sport also overlap in the UK in (i) the acquisition of AV sports production services and (ii) the sale of advertising on AV services. In relation to the former, the evidence indicates that Eurosport UK&I acquires such services on an exceptional basis only, with this activity representing a minimal estimated share of this segment. In relation to the latter, the evidence indicates that BT Sport and Eurosport UK&I have a minimal estimated combined share of supply in both the segments of TV advertising and online video advertising. Consequently, these overlaps are not considered further in this decision.

<sup>27</sup> FMN, paragraph 164.

<sup>28</sup> In support of this submission, the Parties highlighted Ofcom's findings in its 2015 statement on its review of the pay TV wholesale must-offer (**WMO**) obligation that 'key content' is content capable of influencing the choice of paid for providers for a significant number of consumers, and that live Premier League and to a lesser extent live Champions League represent key content (Ofcom statement titled 'Review of the pay TV wholesale must-offer obligation' dated 19 November 2015, available at: [Review of the pay TV wholesale must-offer obligation - Ofcom](#)). The WMO obligation was imposed by Ofcom further to its 2010 review of the pay TV market and required Sky to offer to wholesale its Sky Sports 1 and 2 channels to other pay TV providers with certain prices and terms set by Ofcom.

than other types of sports content (high value being, in the Parties' view, the key distinguishing factor distinguishing premium from non-premium rights, as the value of such rights reflects their importance as a driver of consumer demand).<sup>29</sup> The Parties also acknowledged, however, that the determination of what constitutes a premium right is, to a degree, subjective and fluid.<sup>30</sup>

### *CMA's assessment*

24. Overall, respondents to the CMA's merger investigation indicated that there is a significant degree of differentiation in different types of sports content. Considering the value of individual rights, several respondents to the CMA's merger investigation identified the Premier League and Champions League as being of particularly high consumer interest and, therefore, having the highest value rights. This is consistent with the Parties' internal documents<sup>31</sup> as well as evidence submitted by the Parties<sup>32</sup> and third parties on their spend on sports rights in 2021, which showed that rights for the Premier League football and Champions League football are higher value than rights for other sports content by an order of magnitude.
25. The evidence received by the CMA also indicates that the distinction between rights that could be categorised as premium and other rights is to some extent, fluid. While some third parties distinguished between rights to the Premier League and Champions League as being clearly premium and all other rights as non-premium, others identified certain other rights for other tournaments and specific events as being of particular importance to viewers (and therefore AV sports content suppliers).<sup>33</sup>
26. The CMA has therefore assessed the impact of the Merger on the acquisition of sports rights overall, without further segmentation. In any event, the outcome of any market definition exercise does not determine the outcome of the CMA's analysis of the competitive effects of a merger, as the CMA may take into account

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<sup>29</sup> In this regard, the Parties noted that, on a per annum basis, the 2021 spend on Premier League rights, Champion League rights and Formula 1 rights was approximately £[REDACTED], £[REDACTED] and £[REDACTED], respectively (whereas the Australian and French Open were each valued at £[REDACTED]) (FMN, paragraphs 162 to 163). The Parties also submitted that other factors – such as audience numbers and interest, and the individual characteristics of the competition – are also relevant to whether content may be considered 'premium' (FMN, paragraph 161).

<sup>30</sup> FMN, paragraph 163.

<sup>31</sup> For example, a WBD internal document dated 28 January 2022 discussing the Merger opportunity describes [REDACTED] (FMN, Annex 9.D.011, page 13).

<sup>32</sup> FMN, paragraphs 161 to 163.

<sup>33</sup> For example, Group A Listed events such as the Olympics, the Wimbledon tennis finals and the Rugby World Cup.



constraints from outside the relevant market or segmentation within the market such that no finely balanced judgements on what is ‘inside’ or ‘outside’ the market are required.<sup>34</sup>

27. As Eurosport UK&I does not hold rights to the Premier League and the Champions League [X],<sup>35</sup> in its competitive assessment, the CMA has focused in particular on the impact of the Merger in the acquisition of non-premium rights. However, it was not necessary for the CMA to reach a conclusion on the precise product frame of reference, nor an exact boundary between premium and non-premium rights since, as set out below, no competition concerns arise on any plausible basis.

### ***Wholesale supply of AV sports content***

28. Wholesale suppliers of AV sports content aggregate AV content into linear channels (and, in some cases, VOD content) which they license to retail suppliers of AV sports content.

### ***Parties’ submissions***

29. The Parties submitted that the narrowest plausible frame of reference is the wholesale supply of AV sports content, including TV channels carrying sports content.<sup>36</sup>

### ***CMA’s assessment***

30. The evidence received by the CMA indicated that there is significant differentiation in the supply of AV sports content at the wholesale level. Third parties drew a distinction between the offerings of Sky and BT Sport on one hand (noting that these include ‘premium’ or ‘must have’ football content) and Eurosport UK&I’s offering on the other, which was described as ‘niche’ and ‘very different’ (to that of BT Sport) in nature. The CMA has assessed the impact of the Merger on the wholesale supply of AV sports content without further segmentation and has considered any differences between different types of sports content, where relevant, in its competitive assessment. However, it was not necessary for the CMA to reach a conclusion on the precise product frame of reference since, as set out below, no competition concerns arise on any plausible basis.

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<sup>34</sup> [Merger Assessment Guidelines](#), paragraph 9.4.

<sup>35</sup> FMN, paragraph 153. Further, BT’s internal documents show that Eurosport UK&I is not considered as a potential competitor [X]. An internal document dated January 2021 prepared for BT’s board [X] (FMN, Annex 9.B.001, page 5).

<sup>36</sup> FMN, paragraph 245.

### ***Retail supply of AV sports content***

31. At the retail level, AV sports content is made available to end-customers (viewers). Retail suppliers may operate different business models. For example, some offer ‘free-to-air’ (FTA) channels funded by advertising or public subsidy / provided to viewers free of charge, whereas others supply pay TV services (ie, TV services provided to viewers in return for a subscription or transactional fee (and which may be provided on a standalone basis or as part of broader communications package)).<sup>37</sup> Retail suppliers may also deploy different distribution technologies, including ‘traditional’ TV technologies<sup>38</sup> and OTT technology (which may also be provided for free or on a paid for basis, such as for a subscription fee).<sup>39</sup>

### ***Parties’ submissions***

32. The Parties submitted that the narrowest plausible candidate frame of reference is the retail supply of AV services carrying sports content.<sup>40</sup>

### ***CMA’s assessment***

33. Overall, the evidence indicates that different types of providers compete, to varying degrees, in the retail supply of AV sports content. FTA providers that responded to the CMA’s merger investigation indicated that they compete closely against both FTA providers and paid for providers, while the majority of paid for providers indicated that they compete most closely against other paid for providers. Nearly all retail provider respondents (whether FTA or paid for providers) identified both ‘traditional’ TV providers and OTT providers as competitors. Internal documents prepared by BT and WBD highlight competition from FTA and paid for providers, including traditional TV and OTT providers.<sup>41</sup>
34. The CMA has therefore assessed the impact of the Merger on the retail supply of AV sports content without further segmentation and has considered any differences between different types of sports content providers and distribution technologies, where relevant, in its competitive assessment. However, it was not

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<sup>37</sup> For example, multiple play services combine AV content with other communications service, such the supply of mobile telecommunications services, fixed telephony services or fixed internet access.

<sup>38</sup> For example, ‘traditional’ TV technologies include distribution via radio signal in digital format from land-based (terrestrial) television stations (DTT); direct-to-home by radio signal from satellites (DTH); via a closed, typically fibre optic cable system (digital cable TV); and IPTV ie using the internet protocol over closed networks.

<sup>39</sup> In this decision, the CMA refers to providers of ‘paid for’ services, including pay TV providers and subscription OTT providers, as **paid for providers**.

<sup>40</sup> FMN, paragraph 290.

<sup>41</sup> For example, [X].

necessary for the CMA to reach a conclusion on the precise product frame of reference since, as set out below, no competition concerns arise on any plausible basis.

## **Geographic scope**

### ***Acquisition of sports rights***

35. The Parties submitted that the exact scope of the geographic frame of reference for the acquisition of sports rights can be left open as the Merger does not raise any concerns under any potential frame of reference.<sup>42</sup> The Parties noted that in previous merger decisions, the geographic frame of reference has been found as likely to be national or alternatively, either national or regional, based on linguistically homogenous areas.<sup>43</sup> The Parties submitted share of supply data on an UK and Republic of Ireland basis as many rights are acquired on an UK and Ireland and/or wider geographic basis.<sup>44</sup>
36. The CMA requested evidence from third parties on their sports rights held for the UK (including rights for broader territories that include the UK) 2021. This showed that while many rights are acquired on a UK and Ireland basis (or, in a minority of cases, on a wider basis),<sup>45</sup> a significant proportion are acquired for the UK specifically. The CMA has therefore assessed the impact of the Merger on the acquisition of sports rights in the UK.

### ***Wholesale supply of AV sports content***

37. The Parties submitted that the precise scope of the geographic frame of reference for the wholesale supply of AV sports content can be left open.<sup>46</sup> The Parties noted that in previous merger decisions, the geographic frame of reference has been found as likely to be national, and potentially sub-national or regional in scope, based on linguistically homogenous areas<sup>47</sup> but that since channels are generally licensed by wholesale suppliers to retail platforms on a national basis, the same

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<sup>42</sup> FMN, paragraph 182.

<sup>43</sup> For example, in the European Commission's decision of 12 November 2019 in M.9064 — *Telia Company / Bonnier Broadcasting Holding*, paras 128-131, and the OFT's decision of 5 July 2013 in ME/6004/13 – *Anticipated acquisition by British Telecommunications plc of ESPN Global Limited*, paragraph 30.

<sup>44</sup> FMN, Table 14.1.

<sup>45</sup> For example, the ECB (England and Wales Cricket Board) rights are licensed for Europe (including UK).

<sup>46</sup> FMN, paragraph 247.

<sup>47</sup> FMN, paragraph 246 and footnote 106. For example, in the European Commission's decision of 6 October 2020 in M.9669 — *PPF Group / Central European Media Enterprises*, paragraph 42.

channels may not be available throughout a linguistically homogenous supra-national region.<sup>48</sup>

38. The CMA has not seen evidence to indicate that conditions of competition differ within the UK nor evidence of a need to consider conditions of competition outside of the UK in its assessment. The CMA notes that internal documents of BT [REDACTED]. The CMA has therefore assessed the impact of the Merger on the wholesale supply of AV sports content in the UK.

### **Retail supply of AV sports content**

39. The Parties submitted that, for the purposes of assessing the impact of the Merger, the narrowest plausible geographic frame of reference is national, but that the Merger will not raise competition concerns at the retail level regardless of the precise geographic market defined.<sup>49</sup> The Parties noted that in previous merger decisions, the geographic frame of reference has been defined as national<sup>50</sup> or, at most, relating to linguistically homogeneous areas<sup>51</sup> or the geographic coverage of a supplier's network.<sup>52</sup>
40. The CMA has not seen evidence to indicate that conditions of competition differ within the UK nor evidence of a need to consider conditions of competition outside of the UK in its assessment. In particular, internal documents of BT [REDACTED].<sup>53</sup> The CMA has therefore assessed the impact of the Merger on the retail supply of AV sports content in the UK.

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<sup>48</sup> Therefore, without prejudice to their submission that the geographic frame of reference could be left open, the Parties submitted share of supply data on a UK basis. (FMN, paragraph 247 and Tables 14.2, 14.2A, 14.2B, 14.3, 14.3A, 14.3B, 14.4, 14.4A and 14.4B).

<sup>49</sup> The Parties therefore submitted share of supply data on a UK basis (FMN, paragraphs 292, 380 and 381 and Tables 14.5, 14.6, 14.6A, 14.6B, 14.7, 14.7A and 14.7B).

<sup>50</sup> FMN, paragraph 291 and footnote 145. For example, in the European Commission's decision of, *inter alia*, 6 November 2018 in M.8785 — *The Walt Disney Company / Twenty-First Century Fox*, paragraph 100. The Parties also noted the Competition Commission's decisions of 14 December 2007 in Acquisition by British Sky Broadcasting Group plc of 17.9% of the shares in ITV plc, paragraph 4.36 and 4 February 2009 in BBC Worldwide Limited, Channel Four Television Corporation and ITV plc, para 4.43.

<sup>51</sup> For example, in the European Commission's decision of 11 September 2014 in M.7332 — *BskyB / Sky Deutschland / Sky Italia*, paragraph 68.

<sup>52</sup> For example, in the European Commission's decision of 12 August 2020 in M.9802 — *Liberty Global / DPG Media / JV*, paragraph 71.

<sup>53</sup> For example, FMN, Annex 10.B.011, produced for the BT Executive Committee [REDACTED] (page 18); and FMN, Annex 10.B.027, produced for the BT Executive Committee [REDACTED].

## Conclusion on frame of reference

41. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) the acquisition of sports rights for the UK;
  - (b) the wholesale supply of AV sports content in the UK; and
  - (c) the retail supply of AV sports content in the UK.

## COMPETITIVE ASSESSMENT

### Horizontal unilateral effects

42. 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 non-price aspects of its competitive offering (such as quality, range, service and innovation) on its own and without needing to coordinate with its rivals.<sup>54</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.<sup>55</sup> The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC in relation to horizontal unilateral effects in:
- (a) the acquisition of sports rights for the UK;
  - (b) the wholesale supply of AV sports content in the UK; and
  - (c) the retail supply of AV sports content in the UK.

### *Acquisition of sports rights for the UK*

43. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC through horizontal unilateral effects in the acquisition of sports rights. In its assessment, the CMA considered: (i) the Parties' activities; (ii) the Parties' and competitors' shares of supply; (iii) closeness of competition between the Parties; and (iv) the competitive constraints remaining post-Merger.
44. As described in paragraphs 24 and 25, the CMA received evidence that, in the UK, the Premier League and the Champions League are considered 'premium' content,

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<sup>54</sup> [Merger Assessment Guidelines](#), paragraph 4.1.

<sup>55</sup> [Merger Assessment Guidelines](#), paragraphs 4.8 to 4.10.

but for other types of sports content, the distinction between what may be considered ‘premium’ and ‘non-premium content may be more fluid. Going forward in this decision, the CMA uses the term ‘premium’ to refer to the Premier League and the Champions League and ‘non-premium’ to refer to all other AV sports content (recognising that the precise boundary between premium and non-premium AV sports content is not clear cut). As noted in paragraph 27, in its competitive assessment, the CMA has focussed in particular on the impact of the Merger in the acquisition of non-premium sports rights given that this is where the Parties’ activities overlap.

### *Parties’ activities*

45. As described above at paragraphs 9(a) and 11(a), the Parties are both active in the acquisition of sports rights for the UK from rights holders.<sup>56</sup>
46. BT Sport’s rights portfolio includes rights for the Premier League and the Champions League as well as rights for other football tournaments, rugby, cricket, motor racing and boxing events. Eurosport UK&I holds rights in relation to a range of sports such as winter sports, motorsports, cycling, snooker, running, tennis, boxing/mixed martial arts and mixed sports tournaments.

### *Shares of supply*

47. The CMA calculated shares of supply for the acquisition in the UK of (i) all sports rights and (ii) non-premium sports rights using data provided by the Parties and third parties on the per annum value of sports rights they held for the year 2021.<sup>57</sup> These shares are presented in Table 1 below.<sup>58</sup>

**Table 1: Shares of supply of the acquisition of sports rights in the UK, by value (2021)**

<i>Acquirer</i>	<i>All sports rights (%)</i>	<i>Non-premium rights (%)</i>
BT Sport	[20-30]	[10-20]
Eurosport UK&I	[0-5]	[0-5]
<b>Combined</b>	[20-30]	[10-20]

<sup>56</sup> WBD is generally active in the acquisition of broadcasting rights, but only through Eurosport and WarnerMedia for the acquisition of sports rights (and its WarnerMedia activities in this respect relate to the Americas only, while Eurosport’s rights for the UK and Ireland will be contributed to the JV). BT is active in the acquisition of rights for other (non-sport) content for the UK, but is only active in the acquisition of sports rights through BT Sport. (FMN, paragraphs 148 and 154). In its competitive assessment below, the CMA has therefore focused on the activities of the JV.

<sup>57</sup> For third parties that did not respond to the CMA’s merger investigation, the CMA used estimates provided by the Parties (FMN, Table 14.1).

<sup>58</sup> As noted in paragraph 36, while a significant proportion of rights for the UK are national in scope, many are rights for the UK and Ireland and in some cases have a wider territorial scope. Accordingly, in some cases, the shares in Table 1 reflect the value of rights for the UK and Ireland (and exceptionally, wider).

Sky	[50-60]	[50-60]
BBC	[5-10]	[10-20]
ITV	[5-10]	[10-20]
Amazon	[0-5]	[0-5]
Others**	[0-5]	[0-5]
<b>Total</b>	<b>100</b>	<b>100</b>

Source: CMA analysis of Parties' actual data (FMN, Table 14.1) and competitors' actual data submitted in response to the CMA's questionnaires.

Notes: (\*) For rights for events that only occur on a multi-year cycle (eg, the Olympics), the total value of the right has been distributed equally on a per-annum basis over the number of years in the right held. (\*\*) Others are Premier Sports, DAZN, Channel 4 and Channel 5.

48. In the acquisition of sports rights for the UK overall, the share of supply estimates show that the JV has a combined share of [20-30]%, with a limited increment of only [0-5]% attributable to Eurosport UK&I, which has very small market presence relative to other acquirers of sports content. The largest player is Sky ([50-60]%) by a significant margin, followed by BBC ([5-10]%), ITV ([5-10]%), Amazon ([0-5]%) and a tail of smaller players together accounting for less than [0-5]%.
49. In the category of non-premium rights, the JV has a smaller share than in sports rights overall, with a [10-20]% combined share with again, a limited increment of [0-5]%. As Eurosport UK&I (as noted in paragraph 27) is not active in the acquisition of premium rights, the CMA considers the non-premium share of supply estimates to be more informative as a source of evidence on the closeness of competition between the Parties. Within the non-premium category, the largest player is again, by a significant margin, Sky ([50-60]%), followed by sizeable competitors in the FTA providers BBC ([10-20]%) and ITV ([10-20]%). Amazon has a smaller share ([0-5]%) followed by a tail of smaller players together accounting for approximately [0-5]%.

### *Closeness of competition*

#### *Parties' submissions*

50. The Parties submitted that BT Sport and Eurosport UK&I do not compete closely in the acquisition of non-premium sports rights (and not at all in the acquisition of premium sports rights),<sup>59</sup> primarily due to their different and commercial strategies, which reflect their different origins.<sup>60</sup>

<sup>59</sup> As defined by the Parties, ie the Premier League, Champions League and Formula 1.

<sup>60</sup> FMN, paragraphs 59, 397 and 398.

### *CMA's assessment*

51. The evidence received by the CMA indicates that BT Sport has a wider focus in its acquisition strategy than Eurosport UK&I (in that BT Sport acquires both premium and non-premium sports content, while Eurosport UK&I focuses solely on non-premium sports content). Within the acquisition of non-premium content specifically, Eurosport UK&I and BT Sport do not compete closely.
52. In general, third parties active in the supply of AV sports content described the AV sports content offerings of the BT Sport and Eurosport UK&I as very different in terms of types of sports covered and the value of such content. One third party described Eurosport UK&I's rights portfolio as comprising rights for 'niche' sports such as snooker, cycling and winter sports in contrast to BT Sport's 'premium' AV sports content.<sup>61</sup> Another described the crossover between BT Sport's and Eurosport UK&I's sports rights portfolios as limited, noting that BT Sport supplies football, rugby and some combat AV content, whereas Eurosport UK&I supplies winter sports, Olympic sports, snooker, cycling and tennis AV content. This indicates that, for the most part, the rights that BT Sport and Eurosport UK&I are likely to compete for are different.
53. BT's and WBD's internal documents also highlight their different sports rights acquisition strategies<sup>62</sup> and indicate that, [REDACTED].<sup>63</sup>

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<sup>61</sup> Consistent with the Parties' submissions set out in paragraph 50, the third party explained that, accordingly, Eurosport UK&I channels are offered to viewers by retail suppliers as part of a package of basic pay channels which typically include general entertainment, documentary, factual as well as basic sport, whereas channels that contain 'premium' AV sports content, such as BT Sport's, are included in 'premium' channel packages.

<sup>62</sup> BT's internal documents indicate a clear strategic focus on establishing itself as [REDACTED]. For example, [REDACTED] (FMN, Annex 9.B.025). In contrast, WBD's internal documents show a focus on other rights. For example, a Finance Committee presentation dated June 2021 [REDACTED]

<sup>63</sup> For example, an internal document dated January 2021 prepared for BT's board [REDACTED], summarising BT Sport's portfolio as comprising rights for the Champions League, Premier League, international cricket, MotoGP, Premiership Rugby, World Wrestling Entertainment, ESPN, boxing, Ultimate Fighting Championship, European Rugby and Bundesliga. FMN, Annex 9.B.001, pages 1-2. An internal Discovery management dated 28 January 2022 discussing the Merger opportunity highlights [REDACTED] (FMN, Annex 9.D.011, page 4).



54. Opportunity data submitted by the Parties<sup>64</sup> also indicate that the overlap between BT Sport's and Eurosport UK&I's activities in the acquisition of non-premium sports rights is limited. [REDACTED].<sup>65</sup> While the dataset shows [REDACTED].<sup>66</sup>

### *Competitive constraints*

#### *Parties' submissions*

55. The Parties submitted that there are numerous actual and potential competitors active in the acquisition of sports rights in the UK: including Sky, BBC, ITV, Amazon, DAZN, Premier Sports, Channel 4, and Channel 5 (based on current rights held) and new entrants, Apple and Alphabet/YouTube<sup>67</sup> (based on recently announced partnerships).<sup>68</sup> In addition, the Parties noted that media agencies such as Infront and IMG (who are not active in the supply of AV sports content) regularly bid for rights.<sup>69</sup>

#### *CMA's assessment*

56. The evidence indicates that post-Merger Eurosport UK&I and BT Sport will continue to face competition for the acquisition of sports rights (including, in non-premium sports rights specifically). In particular:
- (a) Sky has, by a significant margin, the leading position in the acquisition of sports rights with a [50-60]% share in non-premium, and a [50-60]% share in all sports rights overall with a broad portfolio of premium and non-premium rights in 2021 (see **Table 1: Shares of supply of the acquisition of sports rights in the UK**,

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<sup>64</sup> FMN, Annex 16.1. Eurosport UK&I provided data for the [REDACTED] opportunities (including for rights offered through bilateral negotiations and formal tenders) for which it submitted bids over the last bidding cycle. BT Sport provided opportunity data (including for rights offered through bilateral negotiations and formal tenders) for [REDACTED] opportunities (of which [REDACTED] were non-premium opportunities) in which it bid for rights valued more than £[REDACTED] per annum in the past five years. (FMN, paragraphs 491, 498 and 502.) The CMA notes that some limitations with this dataset limit their probative value. In particular, this data was produced as part of a retrospective exercise (neither Party systematically records opportunity data in the ordinary course and so the data does not represent all available opportunities for sports rights in the UK in which the Parties participated) and, for BT Sport, did not include opportunities in which it participated for rights valued less than £[REDACTED] per annum. The CMA has, therefore, considered the bidding data evidence in the round with other sources of evidence.

<sup>65</sup> Namely, [REDACTED].

<sup>66</sup> In total, the dataset identifies [REDACTED] other known bidders for these rights ([REDACTED]) with BT Sport identified as one of three other known bidders for [REDACTED] opportunities. Eurosport UK&I is identified as a known other bidder for [REDACTED] with [REDACTED] being the most frequently identified other bidder in the non-premium segment followed by [REDACTED].

<sup>67</sup> FMN, paragraphs 404.1 to 404.8.

<sup>68</sup> FMN, paragraphs 403 to 404.10. The Parties further noted recent reports of planned entry including by Viaplay, FIFA and La Liga, Disney (FMN, paragraph 405).

<sup>69</sup> FMN, paragraph 406.

**by value (2021)**). Paid for and FTA providers active in the acquisition of sports rights identified Sky as a competitor for rights, including non-premium rights. The material constraint posed by Sky on BT Sport in particular in [REDACTED] is also reflected in BT's internal documents and bidding data.<sup>70</sup>

- (b) FTA providers are active in the acquisition of non-premium sports rights (currently holding approximately [30-40]% share by value) (see **Table 1: Shares of supply of the acquisition of sports rights in the UK, by value (2021)**). Paid for and FTA providers active in the acquisition of sports rights identified FTA providers as competitors in the acquisition of non-premium rights. Eurosport UK&I's and BT Sport's opportunity data also show that both [REDACTED] compete against FTA providers for non-premium rights,<sup>71</sup> while WBD's internal documents highlight competition from FTA providers [REDACTED].<sup>72</sup>
- (c) More recently, OTT providers have become active in the acquisition of both premium and non-premium sports rights. Amazon has a [0-5]% share by value of sports rights overall and non-premium sports rights and DAZN is present in the category of 'others' (together with Channel 4 and Channel 5) who collectively have around [0-5]% share in the non-premium segment (see **Table 1: Shares of supply of the acquisition of sports rights in the UK, by value (2021)**).<sup>73</sup> All respondents to the CMA's mergers investigation (including FTA and paid for providers) active in the acquisition of sports rights identified Amazon and several identified other OTT providers including DAZN and NENT as competing for sports rights (including non-premium rights).<sup>74</sup> This is consistent with Eurosport UK&I's and BT's opportunity data – which show that both compete against OTT providers for non-premium sports rights.<sup>75</sup> The Parties' internal documents also highlight competition from OTT providers for premium<sup>76</sup> and non-premium rights<sup>77</sup> and

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<sup>70</sup> For instance, the bidding data identifies Sky as [REDACTED] other bidder that BT bid for opportunities against in the non-premium segment and a BT internal document dated January 2021 prepared for BT's board [REDACTED]. (FMN, Annex 9.B.001, page 5.)

<sup>71</sup> In Eurosport UK&I's dataset [REDACTED]. BT Sport's dataset [REDACTED]. (FMN, Annex 16.1.)

<sup>72</sup> For example, a WBD document dated 2 June 2021 produced for WBD management, notes [REDACTED] (FMN, Annex 10.D.028, page 2).

<sup>73</sup> As has been reported publicly, Amazon has recently been successful in the acquisition of Champion League rights (see, [Amazon and BBC break BT stranglehold on Champions League football | Champions League | The Guardian](#)).

<sup>74</sup> One FTA provider described these OTT providers as 'clear competitors', noting that 'these operators also have significant financial resources which enable them to outbid national/FTA operators'.

<sup>75</sup> [REDACTED] is identified as a known other bidder for non-premium sports rights in both Eurosport UK&I's and BT Sport's datasets. BT Sport also records [REDACTED] as a known other bidder for [REDACTED].

<sup>76</sup> For example, an internal document dated January 2021 prepared for BT's board [REDACTED] (FMN, Annex 9.B.001, page 5). A PWC report provided by WBD also notes that [REDACTED] (FMN, Annex 10.D.022, page 78).

<sup>77</sup> For example, a BT internal document dated 18 March 2022 [REDACTED] (FMN, Annex 10.B.038).

indicate that they consider the presence of OTT providers in the supply of AV sports content is expected to grow in future.<sup>78</sup>

### *Conclusion on horizontal unilateral effects in the acquisition of sports rights for the UK*

57. For the reasons set out above, the CMA believes that the evidence set out above shows that BT Sport has a wider focus in its acquisition strategy than Eurosport UK&I (in that BT Sport acquires both premium and non-premium sports content, while Eurosport UK&I focuses on acquiring solely non-premium sports content). Within the acquisition of non-premium content specifically, Eurosport UK&I has a very small market presence and the Parties are not close competitors. A range of competitors (in particular, the market leader, Sky) will continue to compete with the JV to acquire non-premium sports rights for the UK post-Merger. Accordingly, the CMA believes 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 acquisition of sports rights for the UK.

### *Wholesale supply of AV sports content in the UK*

58. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC through horizontal unilateral effects in the wholesale supply of AV sports content. In its assessment, the CMA considered: (i) the Parties' activities (ii) the Parties' and their competitors' shares of supply; (iii) closeness of competition between the Parties; and (iv) the competitive constraints remaining post-Merger.

#### *Parties' activities*

59. As set out in paragraphs 9(b) and 11(b), the Parties are both active in the wholesale supply of AV sports content to retail suppliers of AV sports content in the UK, with WBD supplying Eurosport UK&I content to suppliers including Sky, Virgin Media and BT and BT supplying BT Sport content to Sky and Virgin Media.<sup>79</sup>

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<sup>78</sup> For example, [REDACTED].

<sup>79</sup> WBD, through Discovery, is also active in the wholesale supply of AV content in the UK including through (outside of Eurosport UK&I) some limited activities in the wholesale supply of AV sports content through Motortrend (dedicated motoring content) and, on an exceptional basis, GB News (a general news channel, containing some highlight clips within sporting news segments) (FMN, paragraph 217 and footnote 80 and Parties' response to CMA RFI 6). BT is not active in the wholesale supply of AV sports content outside of BT Sport (FMN, paragraph 229). The CMA has not received any evidence to indicate that WBD's offerings outside of Eurosport UK&I in the wholesale supply of AV sports content competes closely with BT Sport's wholesale AV sports content offering, and has therefore focused its competitive assessment below on the activities of the JV.

## Shares of supply

60. The CMA calculated shares of supply for the wholesale supply of AV sports content in the UK by value using data provided by the Parties and Sky on their annual revenue generated from the wholesale supply of their AV sports content to third party retail suppliers for the years 2019 to 2021.<sup>80</sup> These shares are presented in Table 2 below.

**Table 2: Shares for the wholesale supply of AV sports content in the UK, by value (2019-2021)**

Provider	2019 (%)	2020 (%)	2021 (%)
BT Sport	[30-40]	[30-40]	[40-50]
Eurosport UK&I	[5-10]	[0-5]	[5-10]
<b>Combined*</b>	<b>[40-50]</b>	<b>[40-50]</b>	<b>[50-60]</b>
Sky	[50-60]	[50-60]	[40-50]
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: CMA analysis of Parties' data (FMN, Table 14.2) and competitors' data submitted in response to the CMA's questionnaires.

Notes: (\*) includes sales by Eurosport UK&I of its content to BT which means that combined shares will overstate the combined position post-Merger of sales to third parties.

61. The following limitations are relevant to the evidential weight the CMA can place on these shares:

- (a) they do not distinguish between the wholesale supply of premium and non-premium sports content;<sup>81</sup>
- (b) they do not reflect the supply of BT Sport's, Eurosport UK&I's and Sky's content – or that of OTT providers, such as Amazon – to viewers via third-party retail suppliers pursuant to direct to consumer distribution arrangements;<sup>82</sup> and

<sup>80</sup> The figures in **Table 2: Shares for the wholesale supply of AV sports content in the UK, by value (2019-2021)** include sales to third parties through wholesale arrangements only and do not include direct to consumer (ie retail) or internal sales.

<sup>81</sup> The Parties provided estimates for premium and non-premium shares of supply for themselves and Sky (FMN, Table 14.3A and Table 14.3b) . However, as BT does not offer specific channels dedicated to premium content, the Parties estimated the split between premium and non-premium content for BT. The Parties also used assumptions to estimate shares for Sky. (Parties' response to CMA questions dated 18 May 2022, paragraph 32.4). The CMA has not been able to verify the assumptions used and, therefore, has not relied on these estimates.

<sup>82</sup> Pursuant to which, the third party retail provider offers access to an upstream supplier's OTT services as part of their retail AV content offering.

(c) they do not reflect the indirect constraint posed on wholesale suppliers by retail suppliers of AV sports content, in particular by OTT providers (or any direct constraint posed by OTT providers).<sup>83</sup>

62. Notwithstanding these limitations, the CMA considers that the shares of supply are indicative of the relative attractiveness of the wholesale content provided by Eurosport UK&I and BT Sport. In particular, the shares show that the value of Eurosport UK&I wholesale content is much lower than that offered by either BT Sport or Sky.

### *Closeness of competition*

#### *Parties' submissions*

63. The Parties submitted that BT Sport's and Eurosport UK&I's AV sports content offerings are strongly differentiated, as they are clearly distinguishable as premium (BT Sport) and non-premium (Eurosport UK&I), as is evidenced by their current rights portfolios and opportunity data.<sup>84</sup> In particular, the Parties submitted that the commercial philosophy behind Eurosport UK&I's wholesale AV sports offering is to achieve as wide as possible an audience (given that it is covering non-premium sports content, and is thus available to viewers outside of 'premium' paid for retail packages) and as such has a fundamentally different business model to that of BT Sport and Sky (whose offering includes premium content – ie, content regarded as driving customer subscriptions – and is thus made available to viewers as part of 'premium' paid for retail packages).<sup>85</sup>

#### *CMA's assessment*

64. The evidence received by the CMA indicates that Eurosport UK&I and BT Sport do not closely compete in the wholesale supply of AV sports content.

65. As discussed in relation to the acquisition of sports rights, in general, third parties active in the supply of AV sports content described the AV sports content offerings

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<sup>83</sup> Retail suppliers of paid for AV sports content purchase AV sports content from wholesale suppliers to include in their paid for AV sports content packages. Competition from suppliers at the retail level may therefore exercise an indirect competitive constraint on wholesale suppliers where the availability of AV sports content from these suppliers constrains the price that consumers are willing to pay for paid for AV sports packages (and, consequently, the price that retail suppliers of paid for AV sports packages are willing to pay for wholesale content). As considered further below, the CMA received some evidence that OTT providers may pose a degree of direct constraint on the JV in the wholesale supply of AV sports content. The CMA has considered the indirect constraint posed by retail suppliers and the direct constraint posed by OTT providers on the JV's wholesale offering post-Merger below.

<sup>84</sup> FMN, paragraph 425.

<sup>85</sup> FMN, paragraph 228.

of the BT Sport and Eurosport UK&I as very different, both in terms of the types of sports covered<sup>86</sup> and the value of their content to viewers.<sup>87</sup> The Parties' internal documents and opportunity data also indicate that BT Sport's and Eurosport UK&I's sports rights acquisition strategies (and resulting AV sports content) differ.<sup>88</sup>

66. Considering the AV sports offering of BT Sport and Eurosport UK&I at the wholesale level specifically, none of the respondents to the CMA's merger investigation active in the acquisition of wholesale AV sports content considered BT Sport's and Eurosport UK&I's offerings to be close substitutes. Rather, they described these offerings as being very different, primarily on account of BT Sport's channels containing premium AV sports content (ie the Premier League and Champions League) that Eurosport UK&I's channels do not have. Some noted that this distinction is reflected in the way that their offerings are made available to viewers at the retail level – with BT Sport's channels being made available on a standalone basis or as part of a 'premium' retail package whereas Eurosport UK&I's channels are made available as part of entry level, 'basic' retail packages – and one noted the significant differential between the price charged by BT and WBD for the wholesale supply of BT Sport and Eurosport UK&I content.

### *Competitive constraints*

#### *Parties' submissions*

67. The Parties submitted that the wholesale supply of AV sports content in the UK is highly competitive.<sup>89</sup> In particular, the Parties submitted that: post-Merger, the JV will face competition from: Sky, who they submitted [redacted]<sup>90</sup> as well as indirect competition from retail suppliers of AV sports content, including new entrant OTT providers, in particular Amazon and DAZN, and the continued presence of FTA suppliers.

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<sup>86</sup> Eg, football, rugby, some combat content (BT Sport) versus winter sports, Olympic sports, snooker, cycling and tennis content (Eurosport UK&I).

<sup>87</sup> BT Sport's content being characterised as more 'premium' versus the 'niche' and 'non-premium' content of Eurosport UK&I.

<sup>88</sup> Consistent with this, opportunity data submitted by the Parties indicate that the overlap between BT Sport's and Eurosport UK&I's AV sports content offerings is limited (see paragraph 54).

<sup>89</sup> FMN, paragraph 421.

<sup>90</sup> The Parties noted that that Sky's position has remained relatively stable for many years, despite BT's entry [redacted] (FMN, paragraph 430).

### *CMA's assessment*

68. The evidence indicates that the JV will face competition from Sky as well as a degree of competitive constraint from OTT providers.
69. The evidence received by the CMA indicates that Sky will be a strong competitor to the JV. In particular:
- (a) Sky's wholesale AV sports content offering is highly valuable and includes an extensive portfolio of sports rights, reflected in its material share in the acquisition of both premium and non-premium sports rights,<sup>91</sup> its consistently sizeable share in the wholesale supply of AV sports content (as shown in **Table 2: Shares for the wholesale supply of AV sports content in the UK, by value (2019-2021)**), and [REDACTED] in BT Sport's opportunity data.<sup>92</sup>
  - (b) BT's internal documents [REDACTED]<sup>93</sup> [REDACTED].<sup>94</sup>
  - (c) Respondents to the CMA's merger investigation active in the acquisition of wholesale AV sports content typically described BT Sport and Sky as 'premium' offerings. While some indicated that they consider BT Sport and Sky to offer comparable but, to a degree, complementary content,<sup>95</sup> one respondent described BT Sport and Sky as competing closely and two considered that that JV would compete more closely with Sky post-Merger.
70. The CMA received some evidence that OTT services may pose a degree of direct constraint (where such providers are active in the wholesale supply of AV sports content) and indirect constraint (where the presence of such providers in the retail supply of AV sports content constrains the price that viewers and therefore retail suppliers of AV sports content are willing to pay for wholesale content) on the JV post-Merger, and that this constraint may increase in the future:
- (a) As set out in paragraph 56(c), the CMA received evidence that OTT providers, including in particular Amazon, DAZN and NENT actively compete for the

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<sup>91</sup> See **Table 1: Shares of supply of the acquisition of sports rights in the UK, by value (2021)**.

<sup>92</sup> FMN, Annex 16.1. [REDACTED]

<sup>93</sup> FMN, Annex 9.B.001, page 2. An internal document dated January 2021 prepared for BT's board [REDACTED].

<sup>94</sup> For example, an internal document prepared for BT's board of directors regarding possible ownership and commercial options for BT Sport dated 10 May 2021 notes [REDACTED] (FMN, Annex 9.B.004, page 3) while another discussing BT's TV strategy and the future of BT Sport notes that [REDACTED] (FMN, Annex 9.B.020, page 4).

<sup>95</sup> For example, one respondent noted that while BT Sport has some premium rights, Sky has premium rights together with a broad portfolio of AV sports content.

acquisition of sports rights and that competition from OTT providers in the acquisition of sports rights is expected to grow.

- (b) The CMA also received evidence from third parties that OTT providers could be considered to be active in the ‘wholesale’ supply of AV sports content (in that they make their content available to retail suppliers using various distribution models)<sup>96</sup> and are active in the retail supply of AV sports content (through their standalone offerings). This indicates that OTT providers may pose a direct or indirect constraint on the JV’s wholesale AV sports content offering post-Merger. One respondent to the CMA’s merger investigation active in the acquisition of wholesale AV sports content identified OTT providers as direct competitors in the ‘wholesale’ (through various distribution models) supply of AV sports content, noting that different distribution technology does not make a material difference to the constraint that they exert (on ‘traditional’ TV providers). However, two respondents submitted that the (indirect or direct) constraint posed by OTT providers at present was limited, owing to the different propositions of OTT (and other) suppliers, whose rights portfolios were, in its view, to a degree complementary.

71. The CMA received some evidence that the retail supply of AV sports content by FTA providers may pose a degree of indirect constraint on the JV’s wholesale AV sports content offering post-Merger. However, the evidence on the extent of such constraint was limited. While one respondent to the CMA’s merger investigation considered that the presence of FTA providers at the retail level exerted such indirect constraint, others did not, on account of their more limited live sports offerings (which they did not consider to be close substitutes to those of wholesale AV sports content suppliers). The CMA has therefore not placed weight on the constraint posed by FTA providers in its assessment of the competitive impact of the Merger on the wholesale supply of AV sports content.

#### *Conclusion on horizontal unilateral effects in the wholesale supply of AV sports content*

72. For the reasons set out above, the CMA believes that BT Sport and Eurosport UK&I are not close competitors in the wholesale supply of AV sports content, and that the JV will face competition from Sky as well as a degree of competitive constraint from OTT providers.

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<sup>96</sup> Owing to these different distribution models, such OTT providers may not be identified as ‘wholesale’ suppliers, for example, where they make their offering available to viewers on third party retail AV content offerings but retain a direct billing relationship with the viewer.



73. Accordingly, the CMA believes 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 wholesale supply of AV sports content in the UK.

### ***Retail supply of AV sports content in the UK***

74. The CMA assessed whether it is or may be the case that the Merger may be expected to result in an SLC through horizontal unilateral effects in the retail supply of AV sports content in the UK. In its assessment, the CMA considered: (i) the Parties' activities; (ii) Parties' and their competitors' shares of supply; (iii) closeness of competition between the Parties; and (iv) the competitive constraints remaining post-Merger.

### ***Parties' activities***

75. As noted in paragraph 11, BT is active in the retail supply of AV sports content<sup>97</sup> to viewers via, in particular, the supply of BT Sport content through:<sup>98</sup>

- (a) a BT bundled package (in which a BT Sport subscription is made available to consumers or businesses as part of a combined BT TV/communications (ie mobile or broadband) package for a subscription fee);<sup>99</sup> and
- (b) the BT Sport app, which is made available to viewers directly or via third party retail suppliers for a subscription fee.<sup>100</sup> i

76. As set out in paragraph 9(c), WBD is active in the retail supply of AV sports content through the supply of Eurosport UK&I content to viewers as part of an

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<sup>97</sup> BT is also active in the UK in the retail supply of other (non-sports) AV content to its connectivity customers and the supply of third party AV sports content through BT bundled packages (FMN, paragraph 259 and Parties' response to CMA RFI 6). The CMA has not received any evidence to indicate that there is material competitive interaction between BT's distribution of third party AV sports content and Eurosport UK&I's retail AV sports content offering, and therefore focused its competitive assessment below on the activities of the JV.

<sup>98</sup> BT also supplies BT Sport content directly to viewers on a PPV basis (where customers pay a one off fee in order to view a particular event) and through the provision of BT Sport to commercial premises (such as pubs, hotels or betting shops) via the premise's Sky Box (FMN, paragraphs 260.3 and 260.4).

<sup>99</sup> FMN, paragraph 260.1 and Annex 11.1 to the Parties' response to CMA RFI 1.

<sup>100</sup> Customers are only granted access to the BT Sport app where they are billed directly by BT (except Sky Channel Only and Sky Pack customers who can view BT Sport via the app on a bonus basis). Sky TV subscribers can contract directly with BT for access to BT Sport; such viewers have a direct billing relationship with BT and can access the BT Sport app. BT had a similar arrangement with TalkTalk whereby TalkTalk broadband customers could contract directly with BT to purchase BT Sport; this arrangement ended in June 2022. (FMN, paragraphs 260.2, 293.1 and 294).

entertainments and sports package available on Discovery+ for a subscription fee made available to viewers directly or via third party retail suppliers.<sup>101</sup>

77. Post-Merger, the Parties intend that, following a transitional period, the JV's combined BT Sport and Eurosport UK&I content (the **JV content**) will be made available to viewers through:

(a) [REDACTED];<sup>102</sup> and

(b) [REDACTED].<sup>103</sup> ii

78. Therefore, post-Merger, the JV will be active in the retail supply of AV sports content through the supply of the JV content via [REDACTED].<sup>104</sup> In its assessment of the competitive impact of the Merger on the retail supply of AV sports content in the UK, the CMA taken into account the pre-Merger supply of BT Sport through BT bundled packages as well as the BT Sport app.

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<sup>101</sup> WBD, through Discovery, is also active in the retail supply of AV content in the UK, including through (outside of Eurosport UK&I) some limited activities in the retail supply of AV sports content through Golf TV (dedicated golfing content) and, on an exceptional basis, TVN Player International (Polish news and entertainment content which includes a limited amount of sporting event coverage broadcast in Polish). The CMA has not received any evidence to indicate that WBD's offerings outside of Eurosport UK&I in the retail supply of AV sports content competes closely with BT Sport's retail AV sports content offering, and has therefore focused its competitive assessment below on the activities of the JV.

<sup>102</sup> The Parties intend that [REDACTED] (FMN, paragraph 48 and footnote 112).

<sup>103</sup> FMN, paragraph 46.

<sup>104</sup> FMN, paragraph 11.

## Shares of supply

79. The Parties submitted estimated shares for the retail supply of AV sports content in the UK based on value for the years 2019-2021.

**Table 3: Shares for the retail supply of AV sports content in the UK, by value (2019-2021)**

<i>Provider</i>	<i>2019 (%)</i>	<i>2020 (%)</i>	<i>2021 (%)</i>
BT Sport	[20-30]	[30-40]	[30-40]
Eurosport UK&I	[0-5]	[0-5]	[0-5]
<b>Combined</b>	<b>[30-40]</b>	<b>[30-40]</b>	<b>[30-40]</b>
Sky	[60-70]	[60-70]	[60-70]
Individual sports' OTT services	[0-5]	[0-5]	[0-5]
Amazon	[0-5]	[0-5]	[0-5]
DAZN	[0-5]	[0-5]	[0-5]
WWE Network	[0-5]	[0-5]	[0-5]
Eleven Sports	[0-5]	[0-5]	[0-5]
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: Parties' actual revenues and Parties' estimated revenues for third parties, having reference to publicly available accounts and the OMDIA TV and Online Intelligence Database (FMN, Table 14.5).

Notes: Shares reflect (actual and estimated, as applicable) revenues for AV sports content supplied via TV and OTT services. For BT Sport, Eurosport UK&I and Sky, shares reflect (actual and estimated, as applicable) wholesale and retail revenues.

80. The following limitations are relevant to the evidential weight the CMA can place on these shares:

- (a) The supply of BT Sport, Eurosport UK&I and Sky content via third party retail suppliers pursuant to wholesale supply arrangements has been allocated to the upstream content provider ie, BT Sport, Eurosport UK&I and Sky, respectively.<sup>105</sup> The shares therefore do not reflect the presence of retail distributors of AV sports content such as Virgin Media.<sup>106</sup>
- (b) The shares do not reflect the presence of FTA providers or free OTT providers (such as Alphabet/YouTube).<sup>107</sup>

<sup>105</sup> ie, the estimated shares of BT Sport, Eurosport UK&I and Sky reflect their (actual and estimated, as applicable) wholesale and retail revenues. The Parties submitted that, because intermediaries such as Virgin Media resell BT Sport, Eurosport UK&I and Sky AV sports content, by aggregating the upstream provider's wholesale and retail revenues, the shares 'see through' the intermediary to the actual provider of the content (FMN, footnote 195 and Annex 14.1).

<sup>106</sup> Further, the Parties provided their actual revenue data for 2021 split by distribution channel, which shows that Eurosport UK&I has a very small presence in the retail supply of AV sports content. As compared with BT Sport, in 2021 Eurosport UK&I generated £[redacted] in subscription revenues via Discovery+ and Eurosport Player whereas BT Sport generated subscription revenues via the BT Sport app of £[redacted] ([redacted] of which (£[redacted]) were generated from subscriptions via access to the app on third party retail services (the Sky/TalkTalk box) in 2021.

<sup>107</sup> The Parties submitted that, given the presence of FTA content providers in the retail provision of sports content, revenue-based metrics do not adequately capture the important competitive constraint these

81. Notwithstanding these limitations, the CMA notes that these figures are nevertheless informative in that they highlight the small increment attributable to Eurosport UK&I and material presence of Sky post-Merger as well as the presence of Amazon and recent entry of DAZN.

### *Closeness of competition*

#### *Parties' submissions*

82. As noted in paragraph 63, the Parties submitted that BT Sport's and Eurosport UK&I's AV sports content offerings are strongly differentiated, as they are clearly distinguishable as premium (BT Sport) and non-premium (Eurosport UK&I), as is evidenced by their current rights portfolios and opportunity data.

#### *CMA's assessment*

83. The evidence received by the CMA indicates that Eurosport UK&I and BT Sport do not closely compete in the retail supply of AV sports content.
84. As discussed in relation to the acquisition of sports rights and summarised in paragraph 65, in general, the evidence received from third parties, the Parties' internal documents and opportunity data indicates that BT Sport's and Eurosport UK&I's AV sports content offerings differ.
85. None of the respondents to the CMA's merger investigation active in the retail supply of AV sports content considered BT Sport's and Eurosport UK&I's offerings to be close substitutes. Further:
- (a) as with respect to the Parties' wholesale offerings (discussed in paragraph 66), in general retail suppliers indicated that there are important differences between the retail offerings of BT Sport and Eurosport UK&I. Most highlighted a significant difference in their content (BT Sport's channels containing premium AV sports

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alternatives exert. The Parties therefore also submitted estimated shares for the retail supply of AV sports content in the UK based on viewership for the years 2019-2021 using data from the Broadcasters' Audience Research Board collated, consolidated and maintained by WBD in the ordinary course. According to these estimates for 2021, post-Merger, the JV would have a [10-20]% share of AV sports content viewership (with an increment of [0-5]% attributable to Eurosport UK&I) and would be the fourth largest player behind the BBC (with a share of [30-40]%), Sky (with a share of [30-40]%) and ITV (with a share of [10-20]%) with Channel 4 having a share of [0-5]% and [0-5]% being attributable to other players. (FMN, Table 14.6). The CMA notes material limitations with these share estimates, including in particular that they only reflect viewership on 'traditional' TV platforms (and not via OTT services). This means that the shares do not reflect (i) the retail presence of Eurosport UK&I (which is only available directly to consumers via Eurosport Player and Discovery+) (ii) the supply of BT Sport and Sky content via the BT Sport and NOW apps (accessed independently or through third party retail suppliers) or (ii) the presence of OTT providers such as Amazon and DAZN.

content, ie the Premier League and Champions League, and Eurosport UK&I offering a broader range of 'niche', non-premium AV sports content).<sup>108</sup> Several pointed to the different ways in (and prices at) which their offerings are made available to viewers (noting that BT Sport's channels are made available on a standalone basis or as part of a 'premium' retail package whereas Eurosport UK&I's channels are made available as part of entry level, 'basic' retail packages).

- (b) considering how the JV businesses' offerings compared to those of other retail suppliers, many retail suppliers described BT Sport's offering as most similar to that of Sky. One FTA provider described Eurosport UK&I's offering as most closely substitutable with FTA services that cover a range of sport while another (paid for) provider described Eurosport UK&I as more similar to smaller players such as Premier Sports and Fite TV.

86. Consistent with their different commercial strategies to date, the Parties' internal documents indicate that the Parties do not consider each other to be close competitors in the retail supply of AV sports content.

- (a) BT's internal documents show that it predominantly assesses competition in retail supply of AV content with reference to [REDACTED]. Although internal documents show that BT [REDACTED],<sup>109</sup> documents that assess competition in retail indicate that BT closely assesses itself against [REDACTED], such as [REDACTED] and [REDACTED].<sup>110</sup>
- (b) WBD's internal documents suggests that WBD views its competitors in retail to be [REDACTED], such as [REDACTED] and [REDACTED].<sup>111</sup>

### *Competitive constraints*

#### *Parties' submissions*

87. The Parties submitted that the retail supply of AV sports content in the UK is highly competitive.<sup>112</sup> In particular, the Parties submitted that: post-Merger, the JV will face competition from: Sky, which holds [REDACTED] in the retail supply of AV sports content in the UK,<sup>113</sup> as well as range of other paid for and FTA providers,<sup>114</sup>

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<sup>108</sup> One retail supplier also noted that Eurosport UK&I channels are broadcast in multiple countries (in particular in Europe) and as a result does not tend to focus on sports which are of particular interest to UK audiences.

<sup>109</sup> See BT Sport [REDACTED], eg FMN, Annex 10.B.56.

<sup>110</sup> FMN, Annex 10.B.024, pages 14 and 19; and Annex 10.B.027, page 7 and 8.

<sup>111</sup> FMN, Annex 10.D.057, page 6.

<sup>112</sup> FMN, paragraphs 446 to 440.

<sup>113</sup> FMN, paragraph 452.

<sup>114</sup> FMN, paragraph 461.

including a growing number of OTT providers, such as Amazon and DAZN<sup>115</sup> and OTT offerings of specific rights holders,<sup>116</sup> among others.

*CMA's assessment*

88. The evidence indicates that the JV will continue to face competition from Sky and increasingly, OTT providers.
89. The evidence received by the CMA indicates that Sky will be a strong competitor to the JV:
- (a) Sky's AV sports content offering (which is available directly to viewers via the NOW app<sup>117</sup>) is highly valuable and includes an extensive portfolio of sports rights, reflected in its significant share in the estimated share of supply data for the retail supply of sports AV content by value (see **Table 3: Shares for the retail supply of AV sports content in the UK, by value (2019-2021)**). While this aggregates Sky's wholesale and retail activities, this is nevertheless indicative of the value of Sky's content to viewers. As described in paragraph 69, the constraint exercised by Sky on BT Sport is further reflected in BT's internal documents and [REDACTED] in BT's opportunity data.
  - (b) as set out in paragraph 69, many retail suppliers described BT Sport's offering as most similar to that of Sky. In making this assessment, respondents referenced their similar 'premium' football content as compared with the lower value content available via other retail services. Two respondents noted that Sky's offering contained premium content as well as a broad portfolio of other content (as compared to BT Sport's more narrow offering), that the JV content would be more similar to post-Merger.
  - (c) BT's internal documents [REDACTED].<sup>118</sup>
90. As set out in paragraphs 33, 56(c) and 70, the CMA received evidence from third parties and the Parties' internal documents and opportunity data that OTT

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<sup>115</sup> FMN, paragraphs 457.1 to 457.3

<sup>116</sup> Such as UFC Fights Pass, NBA League Pass, Manchester United TV and Premiership Rugby TV (FMN, paragraphs 457.5 to 457.11).

<sup>117</sup> NOW (formerly NOW TV) enables access to Sky Sports (plus Entertainment, Sky Cinema and more) without the need for a contract. Customers can pay by day (if they want access to a specific match or event) or month. <https://www.pocket-lint.com/tv/news/now-tv/156005-now-tv-customers-can-now-access-sky-sports-on-demand-content>.

<sup>118</sup> For example, an internal document prepared in November 2021 for BT's board of directors [REDACTED] (FMN, Annex 9.B.020, page 4).

providers are active (or soon to be active) in the retail supply of AV sports content in the UK and are expect to grow in future.

- (a) Considering existing competition in the retail supply of AV sports content, two retail suppliers that responded to the CMA's merger investigation identified Amazon (which operates the Amazon Prime app) as a main competitor with a varied sports content portfolio. Another described BT Sport as most closely substitutable with premium subscription or pay sports services, including DAZN and Amazon (in addition to Sky) whereas another highlighted the increase in rights holders developing direct to consumer OTT propositions as well the entry into the UK of OTT providers well established outside of the UK with a proven platform and access to significant funding (such as DAZN and NENT/Viaplay).
- (b) BT's internal documents also attest to the growing competitive threat posed by OTT providers, including by rights holders to supply sports content direct to consumer.<sup>119</sup> Other BT internal documents indicate that BT perceives an increasing threat from potential new services, such [redacted]<sup>120</sup> [redacted].<sup>121</sup>

91. As discussed in paragraphs 33 and 71, while there is some evidence that the availability of FTA sport content could exert some competitive constraint on the willingness of viewers to pay to access sports content, this is overall limited. The CMA has therefore not placed weight on the constraint posed by FTA providers in its assessment of the competitive impact of the Merger on the retail supply of AV sports content.

#### *Conclusion on horizontal unilateral effects in the retail supply of AV sports content in the UK*

- 92. For the reasons set out above, the CMA believes that BT Sport and Eurosport UK&I are not close competitors in the retail supply of AV sports content, and that the JV will continue to face competition from a range of providers, in particular Sky and increasingly, from OTT providers.
- 93. Accordingly, the CMA does not believe that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the retail supply of AV sports content.

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<sup>119</sup> For example, [redacted].

<sup>120</sup> FMN, Annex 10.B.009, pages 35 to 38

<sup>121</sup> FMN, Annex 10.B.016, page 7.

## BARRIERS TO ENTRY AND EXPANSION

94. 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. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>122</sup>
95. However, the CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

## THIRD PARTY VIEWS

96. The CMA contacted customers and competitors of the Parties.
97. One third party raised a concern that, post-Merger, the JV may have a lower incentive (than BT pre-Merger) to supply BT Sport on a wholesale basis to retail suppliers of AV sports content, or may increase the price of such content (eg, through only supplying the JV content as a bundle for a higher fee), which may in turn negatively impact retail suppliers' ability to compete. Another raised a concern that the Merger could increase barriers to entry in the retail supply of AV sports content if the JV were to restrict access to its wholesale AV sports content through imposing restrictive 'minimum guarantee' requirements in its distribution agreements with retail suppliers or enter into long term exclusive distribution agreements with retail suppliers.
98. The CMA considered whether, post-Merger, the JV would have the ability to foreclose rivals in the retail supply of AV sports content in the UK from access to an important input. The CMA received evidence that access to BT Sport's content may be an important input for retail suppliers. As discussed in paragraphs 65 to 66, respondents to the CMA's merger investigation noted that BT Sport's offering contains premium AV sports content. A small number of respondents identified access to such content as 'must have' for a retail AV sports content offering. However, the CMA did not receive evidence to indicate that the JV (as compared to BT pre-Merger) would have increased ability to foreclose rival retail suppliers. As discussed in relation to the wholesale supply of AV sports content, third parties generally characterised Eurosport UK&I's content as lower value than BT Sport's

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<sup>122</sup> [Merger Assessment Guidelines](#), from paragraph 8.40.



content. No third parties identified Eurosport UK&I's AV sports content as 'must have'.<sup>123</sup>

99. The CMA therefore considered whether, post-Merger, the JV would have an increased incentive to foreclose retail rivals. For the reasons discussed in relation to the retail supply of AV sports content, the CMA does not believe that the JV would have such increased incentive. In particular, the CMA notes that the share of supply data and Eurosport UK&I's actual revenue data show that the increment arising from the Merger in the retail supply of AV sports content is limited (see paragraph 81).<sup>124</sup>
100. No other third parties raised concerns about the Merger.
101. Third party comments have been taken into account where appropriate in the competitive assessment above.

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<sup>123</sup> Two third parties noted that the JV content would be more similar to Sky's AV sports content offering, one of those identified BT Sport's pre-Merger content as 'must have' whereas the other did not consider either BT Sport's or Eurosport UK&I's content to be 'must have'.

<sup>124</sup> Two third parties noted that BT and Sky had announced that the JV will enter into a distribution agreement with Sky extending beyond 2030 to provide for distribution of the JV content by Sky. One raised a concern that this would raise barriers to entry and expansion in the wholesale and retail supply of AV sports content. The CMA notes that the distribution agreement with Sky is [redacted] (FMN, paragraphs 45 and 53.3). For the reasons set out in this paragraph, the CMA does not believe that the JV would have an increased incentive to foreclose retail rivals.

## DECISION

102. For the reasons set out above, 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 United Kingdom.

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

**Elie Yoo**  
**Director, Mergers**  
**Competition and Markets Authority**  
**22 July 2022**

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<sup>i</sup> After the decision was finalised, BT clarified that Sky Channel Only and Sky pack customers do have a direct relationship with BT. BT suggested the footnote should be read as: “Customers are only granted access to the BT Sport app where they are billed directly by BT. For example, Sky Channel Only and Sky Pack customers have a direct billing relationship with BT and can access the BT Sport app. BT has a similar arrangement with TalkTalk whereby TalkTalk broadband customers could contract directly with BT to purchase BT Sport; this offering ended in June 2022.”

<sup>ii</sup> BT will also supply the JV content as agent on behalf of the JV