

BBC response to Ofcom's consultation concerning a proposed reference of competition issues in premium pay TV movies to the Competition Commission

Executive Summary

The BBC welcomes the opportunity to respond to Ofcom's consultation on competition issues in premium pay TV movies, published in March 2010.

Whilst the BBC is not directly involved in the two markets identified by Ofcom in its consultation document, and whilst the free- to-air and the pay TV markets continue to be distinct, it has a clear interest in the investigation. Pay TV is an important part of the television landscape and an important complement to free-to-air television on various TV platforms. As demonstrated by Ofcom's analysis, first-run movies play an important (but declining) role in creating demand for traditional pay-TV services and are likely to play an important and growing role online as televisions become increasingly IP connected.

The BBC broadly agrees with Ofcom's conclusions and proposed actions, which should help to promote fair and effective competition with the aim of increasing consumer choice and fostering innovation. In particular we agree that

- Access to premium movies content is an important component of a competitive pay TV offer – and increasingly important potentially to pay-TV over IP connected platforms
- Sky has market power in the wholesale markets for premium movies channels
- The wholesale market for movies channels contains all Sky movies channels apart from Classics.
- The bundling of premium SVoD and broadcast rights has the potential, especially when combined with Sky's restricted utilisation of said rights, to prevent the future development of online movie distribution in competition with traditional broadcast before, during (and possibly beyond) the first pay window
- Ofcom's sectoral powers are insufficient to achieve its aims of freeing exploitation of SVoD rights in particular.

Consultation questions:

- 1. Do you agree with our analysis of the market for the sale of Movie Rights from Major Hollywood Studios in the first pay TV subscription window in the United Kingdom? Please provide any relevant evidence you have to support your view.*
- 2. Do you agree with our analysis of the features of the markets identified?*
- 3. Are there any other features that we are missing and might be relevant to this assessment of competition in the identified markets?*
- 4. Do you agree with our analysis of the prevention, distortion and restriction of competition caused by the features we have described?*
- 5. Do you agree with our analysis of the impact on consumers regarding choice, innovation and pricing?*
- 6. Do you agree with our analysis of the likely effects of the limited exploitation of SVoD services on competition?*

As a free-to-air broadcaster the BBC does not participate itself in the first Pay-TV window and cannot therefore provide relevant evidence to Ofcom. Nonetheless, as we have noted in previous consultation responses, the BBC broadly agrees with:

1. Ofcom's identification of:
 - a. the market for upstream supply of movie rights from Major Hollywood Studios in the first Pay-TV window in the UK; and
 - b. the wholesale supply of packages including Core Premium Movie channels (including SVoD).
2. The key features of the market (listed in paragraph 1.6 of Ofcom's document) that may contribute to the potential restrictions of competition. However, we would note that:
 - a. Current release window structure is not a problem:

We believe that the current release windows structure is not in itself problematic. Indeed, it has a number of benefits. First, it allows the film studios to maximise their returns on investment through price discrimination - which should, in a high fixed cost industry driven by unpredictable box office hits, promote investment and innovation. Second, it maximises content availability for final consumers by separating different classes of channel with different willingness and ability to pay (i.e. PSBs and pay-TV operators) and facilitating broadcast on a variety of platforms.

- b. Output deals need to be factored into Ofcom's analysis:

The Ofcom analysis should include a consideration of the potential effect of 'output deals.' We understand that each of the six major Hollywood studios have an output deals with Sky. Generally speaking, the purchase price of film rights is related directly to that films performance in the box office; the better the performance, the higher the purchase price. Output deals are, of course, commercially confidential and will differ in detail from studio to studio. Broadly speaking, output deals can provide a studio with a level of guaranteed income through, for instance, a channel agreeing to purchase some films irrespective of box office performance in return for exclusivity.

It is exclusivity during the relevant window that provides the most value for a broadcaster showing movies. Output deals therefore benefit the studios by reducing risk somewhat but may damage competition for rights through their bundling effects.

3. There is a potential trade-off for studios between increased SVoD revenue (due to higher availability in one or more of the movie release windows) and the value studios receive from the sale of broadcast rights:

We agree with Ofcom that the bundling of premium SVoD and broadcast rights in the first pay TV window has the potential, especially when combined with Sky's restricted utilisation of said rights, to prevent the future development of online movie distribution in competition with traditional broadcast before, during (and potentially beyond) the first pay window. Furthermore, the increasing importance of IP delivered functionality to complement and compete with traditional broadcast television means that greater SVoD availability will be beneficial to consumers. But this consumer benefit must be weighed against the potential trade-off between increased SVoD revenue (due to greater competition for rights by competing VoD retailers – which may include the studios – and wider availability in one or more of the movie release windows) and the value studios receive from the sale of broadcast rights. The value of movie rights to a broadcaster depends largely on the degree of exclusivity available to it; the more exclusivity in its window the higher a VoD retailers' willingness to pay (other things being equal). Increased SVoD availability across the release windows may therefore reduce the value of broadcast rights, which in turn could reduce investment and innovation in movies if it outweighed any revenue gains from the greater exploitation of SVoD rights. Reduced investment and innovation in movies would be to the detriment of consumers.

7. Do you consider that the threshold for making a market investigation reference to the Competition Commission is met?

8. Do you consider that we should exercise our discretion to make a market investigation reference to the Competition Commission?

We believe that Ofcom's market analysis as set out in its various consultation documents during its pay-TV investigation has demonstrated that the size of the markets identified and the potential benefits of increased competition are sufficient to warrant a Competition Commission investigation. Moreover, we believe that this is the only effective route for achieving greater competition; Ofcom's sectoral powers are not sufficient to address all the issues identified. We therefore support a reference to the Competition Commission.

9. Do you have any comments on the draft wording of the proposed terms of the market investigation reference as set out in Annex 1?

No.