



EUROPEAN COMMISSION

PRESS RELEASE

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Antitrust: Commission investigates restrictions affecting cross border provision of pay TV services

The European Commission has opened formal antitrust proceedings to examine certain provisions in licensing agreements between several major US film studios (Twentieth Century Fox, Warner Bros., Sony Pictures, NBCUniversal, Paramount Pictures) and the largest European pay-TV broadcasters such as BSkyB of the UK, Canal Plus of France, Sky Italia of Italy, Sky Deutschland of Germany and DTS of Spain. The Commission will in particular investigate whether these provisions prevent broadcasters from providing their services across borders, for example by refusing potential subscribers from other Member States or blocking cross-border access to their services. The opening of proceedings in no way prejudices the outcome of the investigation; it only means that the Commission will treat the case as a matter of priority.

Audiovisual content, such as popular films, is licensed by the US film studios to pay-TV broadcasters on an exclusive and territorial basis, i.e. typically to a single pay-TV broadcaster in each Member State (or a few Member States with a common language). Following a fact-finding investigation carried out in 2012¹, the Commission will examine whether provisions of licensing arrangements for broadcasting by satellite or through online streaming between US film studios and the major European broadcasters, which grant to the latter "absolute territorial protection", may constitute an infringement of EU antitrust rules that prohibit anticompetitive agreements (Article 101 of the Treaty on the functioning of the European Union – TFEU).

The provisions granting "absolute territorial protection" ensure that the films licensed by the US studios are shown exclusively in the Member State where each broadcaster operates via satellite and the internet. These films cannot be made available outside that Member State, even in response to unsolicited requests from potential subscribers in other Member States.

¹ [Annex to Commission's competition report 2012](#)

Background on the pay-TV investigation

In October 2011, the EU Court of Justice addressed in its Premier League/Murphy judgment (joined cases [C-403/08 and C-429/08](#)) the issue of licensing restrictions granting broadcasters an exclusive live broadcasting right for Premier League matches on a territorial basis, generally corresponding to the territory of a Member State. These licensing provisions entailed that TV viewers could only watch the matches transmitted by the broadcasters established in the Member State where they resided. The Court noted that licensing provisions preventing a satellite broadcaster from providing its broadcasts to consumers outside the licensed territory enable each broadcaster to be granted absolute territorial exclusivity in the area covered by the license, thus eliminating all competition between broadcasters and partitioning the market in accordance with national borders. The Court further held that such provisions could not be justified by the need to ensure appropriate remuneration for the rightholders, given that this could be calculated by taking into account the actual and potential audience both in the Member State of broadcast and in any other Member State in which the broadcasts were received.

Background on antitrust investigations

Article 101 of the TFEU prohibits anticompetitive agreements and decisions of associations of undertakings. The implementation of this provision is defined in the Antitrust Regulation (Council Regulation No 1/2003), which can be applied by the Commission and by the national competition authorities of EU Member States.

Article 11(6) of the Antitrust Regulation provides that the initiation of proceedings by the Commission relieves the competition authorities of the Member States of their competence to also apply EU competition rules to the practices concerned. Article 16(1) of the same Regulation provides that national courts must avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated.

The Commission has informed the companies and the competition authorities of the Member States that it has opened proceedings in this case.

There is no legal deadline to complete inquiries into anti-competitive conduct. The duration of an antitrust investigation depends on a number of factors, including the complexity of the case, the extent to which the undertaking concerned cooperates with the Commission and the exercise of the rights of defence.

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