

MOVIES ON PAY TV MARKET INVESTIGATION

NOTICE OF FURTHER POSSIBLE REMEDIES

NBCUniversal's comments – 9 December 2011

(a) Online-access remedy

While this remedy might provide some short-term advantage to OTT providers it would seem likely to become obsolete through technical and market developments such as those identified by the Commission (internet-enabled TVs and STBs). NBCUniversal's clear preference, as previously stated to the Commission, would be for the market to be left to develop naturally rather than as a result of regulatory intervention.

NBCUniversal is not best placed to comment on the possible parameters for qualifying OTT providers and the technical aspects of implementing this proposed remedy. It would, however, expect the process to be technically complex, costly and administratively burdensome.

As a general observation it is surprising that the Commission is now proposing a remedy focused on OTT providers when such providers did not feature materially in the Commission's analysis of the AEC in the Provisional Findings. If the Commission is now proposing a remedy which addresses a revised AEC, it is incumbent on the Commission to re-state its revised AEC in a manner which parties can comment on prior to the publication of the Provisional Decision on Remedies.¹

(b) Supplementary remedy requiring Sky to publish the expiry dates of its contracts relating to FSPTW rights with the six major studios

NBCUniversal believes that the current situation, in which negotiations for FSPTW rights typically commence up to two years prior to those rights becoming available, provides a sufficient amount of time for all prospective buyers to evaluate and submit credible offers. NBCUniversal and the other studios are already sufficiently incentivised to involve and discuss the upcoming licensing of rights with as many parties as possible, well in advance of them becoming available. This is in line with the Commission's finding that there is effective competition for rights at the upstream level. In this regard, NBCUniversal does not consider that any confidentiality restrictions in its contractual arrangements act in any way as an unjustified impediment to the competitive process. There is therefore no need for regulatory-imposed transparency over a process which is already open and deliberative.

Moreover, NBCUniversal is obviously engaged in keen competition with other content providers in the licensing of FSPTW rights. A requirement to publish its agreed contractual terms such as the term and expiration, which would ordinarily be considered commercially sensitive information, has at least the potential to distort competition between rights holders.

¹ We would refer the Commission to the Court's decision, in *Interbrew SA v Competition Commission* [2001] EWHC Admin 367, to overturn a remedy imposed to address a concern on which the parties had not been given the opportunity to comment.