

PARAMOUNT PICTURES CORPORATION

MOVIES ON PAY TV IN THE UK – RESPONSE TO NOTICE OF FURTHER POSSIBLE REMEDIES

1. INTRODUCTION

- 1.1 None of the CC's proposed remedies are warranted given the severe weaknesses of the PFs, which Paramount addressed separately in its Response to Provisional Findings dated 22 September 2011 and subsequent correspondence with the CC. Paramount is finding it increasingly difficult to comment on remedies that purport to remedy, prevent or mitigate a hypothetical AEC, the existence of which there is insufficient evidence to support. In the CC's Remedies Review in 2010, it was proposed that "*theories of harm will be tracked during the investigation as a management tool to ensure that analysis is appropriately focused and that features of an AEC are clearly identified to provide a robust basis for analysing possible remedies.*"¹ Paramount's position remains that the CC must now recognise that the PFs as they stand do not provide a robust basis for analysing possible remedies.
- 1.2 The above said, Paramount will proceed in this document on the assumption that the AEC currently identified in the PFs exists. In Paramount's view, to the extent that there is an AEC to be remedied, "Remedy 4" set out in the CC's Notice of Further Possible Remedies published on 21 November 2011 would be the most effective and least disproportionate of the remedies suggested thus far by the CC. Specifically, Remedy 4:
- (a) Could be effective at resolving the AEC because it lowers barriers to the acquisition of FSPTW rights by the competitors most interested in bidding against Sky: internet-distributed over-the-top (OTT) movie service providers.
 - (b) Is the least disproportionate remedy suggested by the CC because it focuses on the actual problem that the CC believes it has identified (being access to Sky's subscriber base) and does not interfere with the upstream rights market in which competition is working effectively.²

2. ONLINE- ACCESS REMEDY ("REMEDY 4")

- 2.1 Remedy 4 proposes requiring Sky to provide, to any qualifying OTT movie service provider, access to its consumers who are currently able to receive its Anytime+ SVOD content (i.e. those consumers with a Sky Ethernet-enabled set-top box).
- 2.2 If the CC were able to establish the theory of harm in the PFs, which it has not done, Paramount considers that, of the CC's four preferred remedies, Remedy 4 has the best chance of being effective in resolving the competition problem identified. Remedy 4 would pose the lowest risk of having a disproportionate impact on the upstream rights market as well as being the least onerous of the four preferred remedies. However, as the market is changing without intervention, it, like all unnecessary intervention, runs the risk of distorting the market and generating unintended consequences harmful to consumer welfare. For example, this remedy

¹ Para 13, Review of the Competition Commission's approach to remedies in market investigations: recommendations and proposed action, February 2010.

² The CC decided not to pursue a theory of harm relating to the supply of FSPTW movie rights by studios, either individually or collectively: para 4.7, Provisional Findings Report dated 19 August 2011.

could potentially harm Sky's incentive to invest in plant or market plant, reducing its incentive to innovate in future.

2.3 Remedy 4 is less distortive than the CC's other proposed remedies because it preserves competition for FSPTW rights and addresses the market reality that internet-distributed OTT movie service providers can now and will increasingly be the competition facing Sky Movies for movie rights and subsequently subscribers in the FSPTW in the UK. Further evidence has emerged in recent weeks of OTT providers aggregating content in windows other than the FSPTW – a strategy which demonstrates a commitment to UK SVOD movie services. Moreover, Remedy 4 is properly focused on the problem that the CC believes it has identified – being access to Sky's subscriber base.

2.4 Paramount's position is that internet-distributed services do not need access to Sky's platform in order to access the market. It is evident that they have in fact outbid pay TV incumbents to acquire Paramount's FSPTW rights in other territories, notwithstanding the subscriber base advantage of the incumbents and without needing (or indeed, to Paramount's knowledge, seeking) such access. Furthermore, such companies do have the financial resources and incentive to acquire movie content in the FSPTW and SSPTW directly from the studios without regulatory assistance.

3. SUPPLEMENTARY REMEDY

3.1 The CC is also consulting on a third "supplementary" remedy that would require Sky to publish the expiry dates of its contracts relating to FSPTW rights with the six major studios.

3.2 Paramount has little to say on this supplementary remedy. In Paramount's view, this information is often already known by those in the industry to whom it would matter – or would be ascertainable by anyone interested in acquiring rights. It has never been the case that a motivated, interested party has been prevented from bidding for FSPTW rights because the existence and timing of the opportunity was not known to them.

3.3 [REDACTED].³

ENDS

³ [REDACTED].