

MOVIES ON PAY TV MARKET INVESTIGATION

Notice of Possible Remedies under Rule 11 of the *Competition Commission Rules of Procedure*

Introduction

1. On 4 August 2010, the Office of Communications (Ofcom) referred the supply and acquisition of subscription pay-TV movie rights and the wholesale supply and acquisition of packages including core premium movie channels to the Competition Commission (CC) for investigation. The reference was made under [sections 131 and 133](#) of the Enterprise Act 2002 (the Act).
2. In its provisional findings, which were published on 19 August 2011, the CC has provisionally found an adverse effect on competition (AEC) within the meaning of [section 134\(2\)](#) of the Act. Section 11 of the provisional findings identifies those features that give rise to the AEC and the resulting detrimental effects on customers.
3. Where the CC finds that there is an AEC it has a duty under [section 134\(4\)](#) of the Act to decide whether it should take action and/or whether it should recommend others take action to remedy, mitigate or prevent the AEC and any resulting detrimental effects. If the CC decides that such action is appropriate it must also decide what action should be taken and what is to be remedied, mitigated or prevented. In deciding these questions the CC has a duty to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any resulting detrimental effects, as set out in [section 134\(6\)](#) of the Act.
4. This Notice of Possible Remedies (the Notice) sets out and invites comments on possible actions which the CC might take in order to remedy, mitigate or prevent the AEC or any resulting detrimental effects on customers. Prior to deciding what, if any, action should be taken and by whom, the CC will take into account all comments received in response to this Notice and consult further. The parties to this investigation and any other interested persons are requested to provide any views in writing, including any suggestions for additional or alternative remedies that they wish the CC to consider, by 9 September 2011.

Provisional findings on the AEC and resulting detrimental effects

5. We have found that Sky's market power in the pay-TV retail market gives rise to barriers to the acquisition of first subscription pay-TV window (FSPTW) movie rights, and Sky's control of the acquisition of FSPTW movie rights gives rise to it controlling almost all FSPTW movie content in the wholesale market. Sky's control of the acquisition and distribution of FSPTW movie content on pay TV adversely affects competition between pay-TV retailers.
6. On this basis, we have provisionally found that the following feature of the rights market gives rise to an AEC in the pay-TV retail market:

There are barriers to the acquisition of sufficient FSPTW rights to be able to create a movie product which can compete effectively with Sky's movie products.

We have provisionally found that this feature gives rise to the following feature of the wholesale market, which gives rise to the same AEC in the pay TV retail market:

Sky controls the vast majority of FSPTW movie content.

7. Our analysis of the detriment suffered by consumers of pay TV as a result of the AEC we have identified is set out in our provisional findings. While noting that the detriment related to pay TV generally, we focused our estimate of the detriment on the supply of pay-TV movie products. In summary, while recognizing that there are weaknesses with all the available methods for estimating the potential detriment, we estimated that, as a result of the AEC, consumers were paying around £50–£60 million a year more than would otherwise be the case. In addition, we noted that we would expect the limited innovation which had occurred as a result of the AEC to have had effects in restricting both the range and quality of movie products available to consumers, and we noted that this detriment may be at least as important as the static detriment on prices which we had quantified.

Criteria for consideration of remedies

8. When deciding whether any remedial action should be taken and, if so, what that action should be, the CC will consider how comprehensively the possible remedy options—whether individually or as a package—address the AEC and/or its resulting detrimental effects, and whether they are reasonable and practicable.¹ The CC will assess the extent to which different remedy options are likely to be effective in achieving their aims, including whether they are practicable and when they are likely to have effect (ie whether they are timely).² The CC will be guided by the principle of proportionality in ensuring that it acts reasonably in making decisions about remedies. The CC will therefore assess the extent to which different remedy options are proportionate, in particular it will be guided by whether a remedy option:
 - (a) is effective in achieving its legitimate aim;
 - (b) is no more onerous than needed to achieve its aim;
 - (c) is the least onerous if there is a choice between several effective measures; and
 - (d) does not produce disadvantages which are disproportionate to the aim.³
9. In the event that the CC reaches a final decision that there is an AEC, the circumstances in which it will decide not to take any remedial action are likely to be rare but might include situations in which no practicable remedy is available, where the cost of each practicable remedy option is disproportionate compared with the extent that the remedy option resolves the AEC, or where relevant consumer benefits, as defined in [section 134](#) of the Act,⁴ accruing from the market features are both large in relation to the AEC and would be lost as a consequence of any practicable remedy.⁵

¹ *Guidelines for market investigations—Draft for comment*, April 2011, paragraph 69. www.competition-commission.org.uk/rep_pub/consultations/current/pdf/110427_mi_guidelines_text_v8_black_line.pdf.

² *Ibid*, paragraphs 74 & 77.

³ *Ibid*, paragraphs 81–83.

⁴ See paragraph 58 for a discussion of relevant customer benefits.

⁵ *Guidelines for market investigations*, *op cit*, paragraph 94.

Possible remedies on which views are sought

10. We are seeking views on the remedies set out in this Notice and any other remedies which parties to the investigation or other interested persons consider would effectively and proportionately address the AEC or resulting detrimental effects identified in the provisional findings.
11. In order to focus our analysis during the remedies phase of our investigation we have distinguished in this Notice between those remedies which we believe are likely to be effective and those which we believe are not. At this stage we are only minded to consider further those remedies in the first category but we will consider further the remedies in the second category if parties are able to provide evidence and reasoning to explain why we should.
12. We first set out, in paragraphs 14 to 38, those remedies which we believe most likely to be effective and which we are therefore minded to consider further. We also set out here two supplementary remedy options, relating to video on demand (VOD) holdbacks, which, while not addressing our provisional AEC comprehensively in themselves, may enhance the effectiveness of a remedies package if adopted in combination with other remedy options.
13. We then set out in paragraphs 39 to 55 our reasoning regarding those remedies which we believe are not likely to be effective and which, therefore, we are not minded to consider further.

Remedies which we are minded to consider further

14. In this section, we consider three remedies which aim to lower barriers to the acquisition of FSPTW rights and thereby encourage competition with Sky in the acquisition and distribution of FSPTW movie content. These are:
 - (a) restricting the number of major studios⁶ from which Sky may license exclusive FSPTW rights;
 - (b) restricting the range of exclusive rights which Sky may license from the major studios; and
 - (c) 'must retail' measures requiring Sky to acquire on a wholesale basis and market to its retail customers products incorporating FSPTW movie content created by other parties.
15. We discuss each of these possible remedies in turn.

(a) Restricting the number of major studios from which Sky may license exclusive FSPTW rights

16. This remedy would lower barriers to the acquisition of FSPTW rights by enabling other parties to license rights from those major studios with which Sky was prevented from contracting.
17. The CC would first need to satisfy itself that, if Sky were prevented from licensing exclusive FSPTW rights from one or more of the major studios, those studios from

⁶ The 'major studios' are the six largest Hollywood studios.

which Sky was prevented from licensing content rights would have a sufficient incentive to supply other firms and, further, that these other firms could be expected to bid for and acquire these rights and ultimately offer products based on these rights to customers.

18. If it could form such an expectation, the CC would need to determine from how many major studios Sky would be permitted to license rights including, at the far end of the spectrum, that Sky be prohibited from licensing rights from any major studios.⁷
19. Having determined from how many major studios Sky could license rights, the CC would need to consider whether it should specify with which major studios Sky could contract. At this stage, we are minded not to specify with which major studios Sky could contract. Instead we are minded to specify how many major studios Sky could contract with and allow Sky to choose which studio's rights to seek to license.
20. We would need to consider the timescale in which such a remedy could be implemented and its duration. Given the overall length of Sky's FSPTW studio contract renewal cycle, the CC would need to consider whether this remedy approach should be applied in combination with transitional arrangements (including other remedies set out in this Notice) or whether it would be necessary, reasonable or practicable to require that some or all of Sky's existing agreements with the major studios be set aside. The CC would also need to consider whether the constraint should operate for a limited period, for example a specified number of deal rounds.
21. In addition, we would need to consider whether it would be necessary to seek to 'future proof' this remedy (and other remedies in this Notice) by applying it to any party acquiring FSPTW movie rights. We are currently minded that this remedy (and other remedies set out in this Notice), if applied, would apply only to Sky because the AEC that we have provisionally identified relates only to Sky's market power. In our view it would be very difficult to establish clear and comprehensive criteria as a basis for determining whether it would be appropriate to apply this remedy (and the other remedies set out in this Notice) to other parties which, hypothetically, might achieve a position of market power over time.
22. We are also considering whether this remedy, and others set out in this Notice, should be combined in order to enhance the effectiveness, including the timeliness, of our remedies package. For example, it might be appropriate to combine this remedy with a 'must retail' remedy, which we discuss in paragraphs 28 to 30. We set out other possible remedy combinations in paragraphs 56 and 57.

Issues for comment 1

23. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**
 - (a) **Would major studios with which Sky was prevented from contracting have a sufficient incentive to supply FSPTW rights to other firms?**
 - (b) **From how many major studios should Sky be permitted to license exclusive FSPTW rights? On what basis should this be determined?**

⁷ We considered a variant of this remedy option which would allow Sky to contract with all six of the major Hollywood studios but which would limit the proportion of the major studios' output that Sky could license. We considered this remedy impracticable as we could see no rational basis for specifying the proportion of, or which, movies Sky would be allowed to license from each of the studios.

- (c) **Should the CC specify from which major studios Sky would be permitted to license exclusive FSPTW rights?**
- (d) **Should any such measure be time limited to permit Sky to re-bid for rights in subsequent deal rounds, or should, for example, Sky's ability to bid be conditional on others having successfully acquired FSPTW rights?**
- (e) **Within what timescale should Sky be required to reduce the number of major studios with which it contracts to the number specified by the CC? Would it be necessary, reasonable and practicable to adopt other measures in order to bring this remedy into effect sooner, including setting aside some or all of the existing contracts with major studios? Would it be appropriate to apply transitional measures constraining Sky's conduct in the interim and, if so, what transitional measures would be appropriate?**
- (f) **Are there any lessons that may be learnt for the purposes of this inquiry from regulatory interventions which have required content rights to be divided between licensees (for example, in relation to Premiership football rights) or from international experience in movie markets in which there is more than one licensee of the major studios' output, for example the USA?**
- (g) **What circumvention risks would this remedy pose with respect to the incentives of the major studios and Sky and how could these risks be mitigated? For example, would the remedy need to be accompanied by 'must retail' measures in order to lower the risks to other parties of bidding for FSPTW rights (see paragraph 28)?**
- (h) **What costs would arise as a result of this remedy? For example, would some or all of the major studios suffer a reduction in the value of their FSPTW movie rights? Would pay-TV customers incur additional costs or suffer a loss of convenience by having to subscribe to more than one movie service in order to access the output of all six major studios?**
- (i) **Would this remedy give rise to distortions or be likely to have any other unintended consequences. Would, for example, the prospect of such a remedy affect the conduct of Sky or the major studios as regards upcoming contract negotiations?**

(b) Restricting the range of exclusive rights which Sky may license from the major studios

- 24. Sky currently licenses from the major studios both linear and subscription video on demand (SVOD) content rights in the FSPTW on an exclusive basis. Sky also licenses exclusive rights to distribute FSPTW movie content employing a range of technology/platforms extending beyond direct to home (DTH) and including, for example, Internet protocol TV (IPTV). This remedy would lower barriers to the acquisition of FSPTW rights by enabling other parties to license the rights that Sky was prevented from holding.
- 25. This remedy would prohibit Sky from licensing both linear and SVOD FSPTW movie rights on an exclusive basis and/or from licensing linear and SVOD FSPTW distribution rights using all or certain technology/platforms. If such restrictions were placed on Sky other firms could bid for the rights not licensed by Sky which would allow them, if they were successful, to offer linear and/or SVOD movie products in competition with Sky's movie products.

26. Were Sky prevented from licensing certain rights from the major studios, the CC would need to be satisfied that the major studios would have an incentive to make those rights available to other firms and, further, that these other firms could realistically be expected to bid for and acquire these rights and ultimately offer products based on these rights to customers. The CC would also need to consider the timescale in which such a remedy could be implemented, given the overall length of Sky's FSPTW studio contract renewal cycle, and whether this remedy might need to be applied in combination with transitional arrangements or whether it would be necessary to require the setting aside of some or all of the existing contracts with the major studios.

Issues for comment 2

27. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**
- (a) **Whether, if Sky were prevented from licensing certain FSPTW rights from the major studios on an exclusive basis, the major studios would have an incentive to license the rights not acquired by Sky to others and, if not, whether additional measures could be put in place to increase the incentives of the major studios to do so.**
 - (b) **Whether, if Sky were prevented from holding both linear and SVOD rights on an exclusive basis in the FSPTW, it would be necessary to specify which rights it could not hold or whether Sky should be allowed to choose for which rights to bid.**
 - (c) **Whether, if Sky were prevented from licensing as comprehensive a range of exclusive technology/platform distribution rights during the FSPTW, it would be necessary to specify which distribution rights it could not hold or whether should Sky be allowed to choose for which distribution rights to bid .**
 - (d) **Whether technology developments in this sector would be likely to undermine rapidly the effectiveness of a remedy restricting the range of technology/platform distribution rights that Sky could acquire.**
 - (e) **Whether there are any lessons that may be learned from approaches to the licensing of rights adopted by non-major studios or from experience in international markets in which linear and SVOD rights, or different technology/platform distribution rights, are licensed separately.**
 - (f) **Within what timescale Sky should be required to reduce the range of content and distribution rights that it licenses from the major studios to that specified by the CC? Would it be necessary, reasonable and practicable to adopt other measures in order to bring this remedy into effect sooner, including a requirement to set aside some or all of the existing contracts with the major studios? Would it be appropriate to apply transitional measures constraining Sky's conduct in the interim and, if so, what transitional measures would be appropriate to address the AEC in a timely manner?**
 - (g) **Would this remedy pose any circumvention risks and, if so, how could these be mitigated?**

(h) Whether this remedy would give rise to distortions or be likely to have any other unintended consequences. Would costs arise for the major studios in terms of a reduction in the value of their FSPTW movie rights? Would pay-TV customers incur additional costs or suffer a loss of convenience if on-demand and linear FSPTW were not available from the same supplier?

(c) 'Must retail' measures requiring Sky to acquire on a wholesale basis and market to its retail customers products incorporating FSPTW movie content created by other parties

28. This remedy would lower barriers to the acquisition of FSPTW rights by requiring Sky to acquire on a wholesale basis, and offer to its retail customers, rivals' products incorporating FSPTW movie content. This remedy would reduce the risks faced by firms bidding for FSPTW rights by increasing the size of the customer base across which they could potentially monetize any rights they acquired.
29. A 'must retail' remedy could be designed in a number of different ways. We would need to decide to which services the obligation would apply and the extent to which it would be necessary to regulate the specific terms of carriage agreements. At this stage, we have not formed any views on these issues.

Issues for comment 3

30. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**
- (a) How a 'must retail' remedy for FSPTW movie rights should be designed in terms of its scope and specificity. In particular:**
- (i) Which services Sky would be obliged to retail. Would Sky be obliged to retail any product incorporating FSPTW content or only those comprised substantially, or only those comprised entirely, of FSPTW content?**
 - (ii) Whether, and if so how, terms for the wholesale supply to Sky of such services, including charges, revenue sharing arrangements and any minimum guarantees, should be determined. For example, are specific pricing rules necessary or would a general requirement that the terms be 'fair, reasonable and non-discriminatory' (FRND) be sufficient?**
 - (iii) Whether it would be necessary to regulate the size or nature of Sky's marketing investment in these products or the prominence attached to them in its advertising and promotion and, if so, how rules should be designed.**
 - (iv) Whether, and if so how, terms for the retail supply of such services by Sky to its customers should be determined. For example, would it be necessary to regulate the price or other terms on which Sky offered these services to its retail customers, for example as an à la carte or a bundled offering? Could any such rules be specific enough to be effective, while also being sufficiently flexible to maintain their relevance in changing market conditions?**

- (b) **Whether these arrangements should be reciprocal. Should other pay-TV operators be obliged to retail Sky’s movie products and if so on what terms?**
- (c) **What monitoring and enforcement arrangements would it be necessary to put in place. In particular, would it be necessary to put in place mechanisms for resolving disputes between the parties and, if so, on what criteria or benchmarks could any adjudicator base their assessment? What costs would therefore be likely to arise as a result of this remedy?**
- (d) **Within what timescale could this remedy be implemented?**
- (e) **What circumvention risks would this remedy pose and how could these be mitigated?**
- (f) **Would this remedy give rise to distortions or have any other unintended consequences?**

Supplementary measures

31. We now set out two remedies relating to holdback restrictions in the FSPTW and transactional video on demand (TVOD) release window which would address Sky’s control of the distribution of movie products with FSPTW content:
- (a) *Prohibiting the acquisition of TVOD holdback rights prior to and during the FSPTW.* Holdback and blackout arrangements currently require TVOD streaming and download to rent (DTR) service providers to remove most titles from sale shortly before the commencement of and for the whole period of the FSPTW.
 - (b) *Prohibiting the acquisition of holdback rights which prevent SVOD services being offered during the TVOD window.* Holdbacks currently prevent movies being offered on demand on a subscription basis in the TVOD window. Suppliers offering products in this release window may therefore only offer them on a transactional payment basis.
32. We discuss these two remedies below. Our view currently is that these two remedy options, while not addressing the AEC comprehensively in themselves, may enhance the effectiveness of a remedies package if adopted in combination with other remedy options.
- (a) *Prohibiting the acquisition of TVOD holdback rights prior to and during the FSPTW*
33. This remedy would address Sky’s control of the distribution of movie products with FSPTW content by permitting other firms to compete with Sky through the supply of movies on a TVOD basis during the FSPTW. Although we have provisionally found that, currently, TVOD services are not a close substitute for FSPTW subscription services, this remedy would increase the constraint on Sky’s FSPTW subscription services by enabling parties to offer movie titles on a TVOD basis at the same time as those movies were available on Sky’s linear and SVOD services.
34. However, most TVOD sales currently take place early in the TVOD release window and demand for TVOD content may thus be substantially satisfied by the time the FSPTW commences. If this pattern were to persist it may lessen the effectiveness of this remedy. Alternatively, TVOD operators might seek to extend the sales period of

a title by reducing its price once it entered the FSPTW. We invite views on this and other issues below.

Issues for comment 4

35. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**
- (a) **To what extent this remedy is likely to be effective in constraining Sky's linear and SVOD services in the FSPTW. Do the major studios have an incentive to license TVOD rights during the FSPTW? If they did so, would the majority of TVOD sales continue to be made early in the release window, or would TVOD operators seek to extend the sales period of a title by reducing its price once it entered the FSPTW?**
 - (b) **Within what timescale could this remedy be implemented? Would it be necessary, reasonable and practicable to adopt other measures in order to bring this remedy into effect sooner, for example setting aside the existing contracts with some studios? Would it, alternatively, be appropriate to apply transitional measures to constrain Sky's conduct in the interim and, if so, what transitional measures would be appropriate to address the AEC in a timely manner?**
 - (c) **What circumvention risks would this remedy pose and how could these be mitigated?**
 - (d) **Whether this remedy would give rise to distortions or have any other unintended consequences. In particular, would some studios face costs in terms of a reduction in the value of their FSPTW or other rights as a result?**

(b) Prohibiting the acquisition of holdback rights which prevent SVOD services being offered during the TVOD window

36. This remedy would address Sky's control of the distribution of movie products with FSPTW movie content by enabling firms to offer movies on a subscription on-demand basis during the TVOD window and thus prior to their showing on Sky's linear and SVOD services in the FSPTW.
37. However, the major studios may have insufficient incentive to license rights on this basis. For example, the additional revenue they would generate in the TVOD window might be outweighed by lower revenues in the FSPTW. We invite views on this and other issues below.

Issues for comment 5

38. **We invite views on the effectiveness and proportionality of this remedy and, in particular, on the following:**
- (a) **To what extent this remedy is likely to be effective in constraining Sky's linear and SVOD services in the FSPTW window. Do the major studios have sufficient incentive to license SVOD services during the TVOD window?**
 - (b) **Within what timescale could this remedy be implemented? Would it be necessary, reasonable and practicable to adopt other measures in order to bring this remedy into effect sooner, for example setting aside the existing**

contracts with some studios. Would it, alternatively, be appropriate to apply transitional measures in the interim to constrain Sky's conduct and, if so, what transitional measures would be appropriate to address the AEC in a timely manner?

- (c) What circumvention risks would this remedy pose and how could these be mitigated?**
- (d) Whether this remedy would give rise to distortions or have any other unintended consequences.**

Remedies that we are minded not to consider further

39. In this section we set out a number of remedies that we have provisionally concluded would be ineffective in addressing our provisional AEC and which, accordingly, we are minded not to consider further unless evidence and reasoning to the contrary are put to us. We invite views on these remedies, including whether some or all of them should be given further consideration.

Wholesale must offer

40. A wholesale must offer (WMO) remedy could address Sky's control of the distribution of movie products with FSPTW content by requiring it to offer other pay-TV retailers some or all of its movie products containing FSPTW movie content on regulated terms.
41. We have significant concerns that a WMO remedy, certainly one of unlimited duration, would be likely to extinguish any potential rivalry between pay-TV operators in bidding for FSPTW movie rights and dilute, if not eradicate, incentives to innovate. Sky's pay-TV rivals would have little incentive to bid against Sky for FSPTW movie rights as they would be the ultimate beneficiaries of these rights under the terms of the WMO remedy. Also, without implementing other measures to lower the barriers to bidding for FSPTW rights, rival pay-TV operators, or other potential bidders for FSPTW rights, would be in no better position to compete against Sky for FSPTW rights as a result of this remedy.
42. On the other hand, we noted that WMO remedies have been adopted by Ofcom in the context of UK sports rights, were considered by Ofcom in the context of both linear and SVOD pay-TV movie services⁸ and that there is evidence that they have been effective in facilitating market entry in the broadcast media sector in other jurisdictions.⁹
43. In our view, a WMO remedy is unlikely to offer the prospect of a competitive outcome over the longer term whereas other remedies in this Notice may do so. However, we would consider a WMO remedy further, particularly as a time-limited, transitional measure, if the other remedies in this Notice proved on further analysis to be ineffective, including being insufficiently timely. We invite comments on this provisional view.

⁸ Ofcom concluded that a WMO measure for SVOD services, while a forward-looking remedy, lay beyond its powers under the Act. See http://stakeholders.ofcom.org.uk/binaries/consultations/movies_reference/summary/moviescondoc.pdf, paragraph 1.13.

⁹ See Ofcom's phase 3 pay TV document, Annex 11: http://stakeholders.ofcom.org.uk/binaries/consultations/third_paytv/annexes/annex11.pdf.

Divesting Sky of its rights acquisition, content aggregation and wholesaling functions

44. We considered a remedy which would address Sky's control of the distribution of movie products with FSPTW content by requiring Sky to hive off into a separate business entity its rights acquisition, content aggregation and wholesaling functions, including the benefits of Sky's current contracts with the major studios. Sky would then be required to sell this entity to a suitable purchaser, independent of Sky, which would have both the resources and incentive to act as a competitive constraint on Sky. The entity would supply Sky with movie channels on a wholesale basis, offer movie channels to other pay-TV retailers and would compete with other parties (excluding Sky, which would be prohibited) for FSPTW rights as and when its legacy contracts came up for renegotiation.
45. We considered whether such a measure might provide a one-off, 'structural' solution of the type which the CC believes have important advantages over other types of remedy in addressing competition problems arising from market structure.¹⁰ However, we had significant concerns as to whether this remedy would be practicable. In particular, we could not be confident that the major studios would consent to their contracts with Sky being transferred and, as these contracts would be the new entity's principal asset, we could not form an expectation that a suitable purchaser of the new entity would be found. We believe that a remedy limiting the number of major studios from which Sky was allowed to license FSPTW rights (see paragraphs 16 to 23) could encourage competition but without raising the same practicability issues or incurring many of the costs and risks that would inevitably arise from this remedy. For these reasons we are not minded to consider this remedy further. However, we invite views, in particular from the major studios, on the practicability of transferring the output contracts between the major studios and Sky to a new entity.

Divesting a proportion of Sky's retail customers

46. We considered a remedy whereby Sky would be required to divest a proportion of its movie channel subscribers to a suitable purchaser, independent of Sky, which would have both the resources and incentive to act as a competitive constraint on Sky. By reducing Sky's incumbency advantage when bidding for FSPTW movie rights, this remedy would aim to lower the barriers to the acquisition of these rights.
47. We had significant concerns as to the practicability of this remedy. Because Sky sells its services in bundles, it would be necessary to divest Sky subscribers rather than subscriptions to Sky movie services. Carving out these assets would be difficult as the subscribers concerned might not wish to be transferred, subscribers' services would extend beyond movies to other pay-TV and communications services and the prospect of identifying a suitable purchaser able to support the full range of services would be uncertain. Measures to prevent circumvention would also be necessary, for example to prevent Sky from re-acquiring transferred subscribers, at least in the short term. We also considered that there was a high risk that this remedy might introduce fresh distortions.
48. For these reasons we concluded that this remedy would not address effectively the AEC we have provisionally found.

¹⁰ [Guidelines for market investigations](#), op cit, paragraph 124.

Changing the duration of the FSPTW

49. We considered a remedy option which would limit the period of time during which Sky could benefit from its strong position in the FSPTW by changing the duration of this release window. For example, the FSPTW, for which Sky would retain exclusive rights, could be required to close after 12 months and be followed by a second pay-TV window in which Sky would not be permitted to hold exclusive rights. The remedy would therefore aim to address Sky's control of the distribution of movie products with FSPTW content.
50. We had significant concerns as to the practicability of this remedy. We also believed that there was a high risk of unintended consequences. We concluded that it would not be effective in addressing the AEC we have provisionally found.

A price control

51. We considered a remedy which would reduce the detriment to customers arising from the AEC we have provisionally found by controlling the prices which Sky can charge consumers for its services.
52. Such a remedy would partly address the customer detriment that we have identified, but it would create significant distortions. We judged that it would not stimulate competition, it would require monitoring and enforcement, and it would also be prone to circumvention.
53. We concluded that other remedy options set out in this Notice would be more likely to result in competitive outcomes and so address more effectively the AEC that we have provisionally found, while also being less costly or intrusive. For these reasons, we are not minded to consider this remedy further.

Coterminous studio contracts

54. We considered a remedy which would require Sky's studio contracts to become coterminous. However, we have provisionally concluded that the staggered availability of rights does not represent a significant impediment to the acquisition of FSPTW rights in and of itself. In practice, it appears that rights have come up for renewal in clusters (ie the time gaps between individual major studios' contracts have not always been very large), which would afford a rival bidder the opportunity to negotiate simultaneously with more than one of the major studios. For these reasons we concluded that this remedy would not be effective in addressing the AEC that we have provisionally found.

Issues for comment 6

55. **The CC invites views on all these possible remedies which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.**

Packages of remedies

56. As part of our assessment, we will consider whether we should implement a single remedy or a package of remedies.

Issues for comment 7

57. **Views are invited as to whether the possible remedies in this Notice are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found. By way of illustration, possible combinations of remedies might include:**
- (a) a combination of a remedy to limit the number of major studios from which Sky may license FSPTW movie rights together with ‘must retail’ rules;**
 - (b) a combination of a remedy to limit the range of rights that Sky can acquire from the major studios (linear/SVOD and/or IPTV/DTH rights) together with ‘must retail’ rules;**
 - (c) a remedy preventing Sky from acquiring IPTV distribution rights with DTH distribution rights combined with a remedy preventing it from acquiring SVOD rights with linear rights; or**
 - (d) a remedy preventing Sky from acquiring IPTV distribution rights with DTH distribution rights combined with a restriction on holdback rights in both the TVOD window (with respect to SVOD) and FSPTW (with respect to TVOD).**

Relevant customer benefits

58. The CC may also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of [section 134\(8\)](#) of the Act arising from a feature or features of the market giving rise to the AEC. Relevant customer benefits must comprise one or more of: lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. Relevant customer benefits must also clearly result from one or more features and be unlikely to have come about absent the feature or features concerned.

Issues for comment 8

59. **Views are invited on the nature, scale and likelihood of any relevant customer benefits within the meaning of the Act and on the impact of any possible remedies on any such benefits.**

Next steps

60. The parties to this investigation and any other interested persons are requested to provide any views in writing, including any suggestions for additional or alternative remedies that they wish the CC to consider, by 9 September 2011 either by email to moviesonpaytv@cc.gsi.gov.uk or by writing to:

Inquiry Manager
Competition Commission
Victoria House
Southampton Row
LONDON
WC1B 4AD

61. If necessary, the CC may publish a supplementary notice requesting views on particular issues on remedies that emerge from consultation (see also Note below).

(signed) LAURA CARSTENSEN
Group Chairman
19 August 2011

Note: This Notice is given having regard to the CC's provisional findings, which were published on 19 August 2011. The parties to the investigation or other interested persons have until 16 September 2011 to respond to those provisional findings. In the light of any responses by the parties or by other interested persons, the CC's findings may change and the CC may consider other possible remedies, if appropriate.