



**BT SUBMISSION TO
THE COMPETITION COMMISSION**

**Anticipated 'Kangaroo' joint venture between BBC Worldwide Limited,
Channel Four Television Corporation and ITV plc**

1 August 2008

I. Introduction and summary

BT Group plc ('BT') welcomes the opportunity to provide comments to the Competition Commission ('CC') on the anticipated joint venture, which is publicly known as 'Kangaroo', between BBC Worldwide Limited, Channel Four Television Corporation and ITV plc, which was referred to the CC pursuant to section 33(1) Enterprise Act 2002.

For the reasons set out in the present submission, BT considers that the Kangaroo joint venture raises serious competition concerns that warrant very close scrutiny by the CC. In summary :

- The creation of the Kangaroo joint venture is likely to enable the Kangaroo parties to leverage their market power in linear TV in the UK into the emerging market for VOD services in the UK and thereby reduce competition, to the detriment of consumers.
- The Kangaroo parties together own or control a vast library of very valuable VOD content. In particular, together they control the great majority of all UK-produced TV content. There is a very real likelihood that, by providing this vast library of content on the Kangaroo service, the parties will be able very materially to reduce competition for the supply of UK VOD content.
- The VOD content of the Kangaroo parties is very significant, for the purposes of developing retail VOD services in the UK. For BT's BT Vision ('BTV') service, for example, the Kangaroo parties' VOD content currently represents over [CONFIDENTIAL]% of total viewings of its subscription VOD and [CONFIDENTIAL]% of its PPV viewings (in both cases, excluding films and music videos).
- The 'tipping' in favour of the Kangaroo service may well be accelerated by :
 - the ability of the Kangaroo parties to cross-promote their service on their respective linear TV platforms;
 - the fact that the popularity of the Kangaroo service is likely to attract an increasing proportion of advertising revenues, which will be a significant source of future revenues for suppliers of on-demand content
- The 'tipping' in favour of the Kangaroo service raises a number of potential competition concerns, including, first, very real concerns regarding the reduced incentives of the Kangaroo parties to supply their content to competing retail providers on terms that will enable the latter to compete effectively at the retail level. Second, the extent to which the Kangaroo service may be in a position to obtain third party content on materially more favourable terms than those available to its retail competitors, leading to distortions of competition at the retail level.

The following sections of the present submission are structured as follows :

- Section II : Comments on market definition issues

- Section III : Comments on the position of the Kangaroo parties on the relevant market
- Section IV : Comments on the substitutability, at the wholesale level, of content from the various Kangaroo parties.
- Section V : Outlines BT's competition concerns

Also, attached in Annex 1 is BT's response to the CC's questionnaire, which the CC provided to BT on 24 July 2008.

II. Market definition

A. Content issues

In BT's view, there appears to be a distinct market for the supply of UK TV content on an on-demand basis.

1. Distinct demand for TV content on an on-demand basis.

This distinct demand has been highlighted by the noted success of the BBC's iPlayer. Over a 6-month period, from its launch on 25 December 2007 to 25 June 2008, there were over 100 million requests to view programmes on this platform. In May 2008 alone, according to the BBC, "there were 21.8 million requests to view, some 700,000 per day on average"¹.

Also, the BT Vision ('BTV')² business model [CONFIDENTIAL]. Whilst BTV provides both a subscription VOD and a PPV VOD service, around [CONFIDENTIAL]% of all viewing on the BTV service is on a subscription basis. Also, [CONFIDENTIAL]% of all BTV customers with a subscription have the BTV TV Pack.

The reason for this distinct demand can essentially be explained by the fact that UK consumers have a very strong awareness of, and familiarity with, broadcast TV content. Substantially all households in the UK have TVs; also, Ofcom has estimated that people in the UK spend an average of 3.6 hours each day watching television.³

This demand for TV content, on an on-demand basis, whether for catch-up services or archive TV content, can be distinguished from the demand for user-generated content or other short-form 'clips' that may be available from on-demand providers such as www.youtube.com. In particular :

- Much of the content that is available from on-demand providers, such as www.youtube.com and, more particularly, social networking providers such as www.myspacetv.com, is user-generated. It is not professionally produced, so the picture and sound quality of the content may be noticeably lower than the quality of TV content provided on demand.

¹ http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/06_june/25/iplayer.shtml

² An outline of the BTV service is provided in BT's response to Q3 of the CC questionnaire, which is attached as Annex 1 to the present submission.

³ The Nations and Regions Communications Market, May 2008; <http://www.ofcom.org.uk/research/cm/cmnr08/uksummary.pdf>

- The content that is available from providers such as www.youtube.com and the social networking websites is essentially ‘clips’, often of no more than a few minutes’ duration. This ‘clips’ content is quite different to the longer-form content available from TV content providers, who provide programming that may last for, say 30 – 60 minutes and may provide a ‘series’ of programmes, in which detailed story-lines are developed.
- Consumers who wish to view content on sites such as www.youtube.com will normally locate the content via a search engine on the web-site. These search engines provide a very different experience for consumers to the navigation tools that are provided by providers of TV on demand (such as iPlayer and BT Vision), which aim to provide very easy-to-use navigation systems for consumers. In the case of iPlayer, for example, the BBC relies on consumer familiarity with BBC TV to arrange its iPlayer navigation system to reflect very closely BBC TV (eg, the content is arranged by BBC TV channel).

Furthermore, interest in TV content on an on-demand basis is developing rapidly, particularly as broadband penetration develops.

2. Distinct consumer demand for UK content

In BT’s view, there is distinct consumer demand in the UK for on-demand UK TV content. In particular, this demand is distinct from demand for US TV content. In BT’s view, a hypothetical monopolist of on-demand UK TV content could profitably raise price for this service above the competitive level – sufficient customers would not switch to acquiring US content to render such a price rise unprofitable.

BTV’s launch of [CONFIDENTIAL] content

[CONFIDENTIAL] BT’s analysis of the impact of [CONFIDENTIAL] suggests that there is limited substitutability between US and UK content. In particular, whilst the launch of US content added incremental viewing to the BTV platform it did not replace viewing of UK content.

[CONFIDENTIAL]

Type of content

Both US and UK content is available on the BTV TV Pack subscription service. In other words, consumers pay the same price, regardless of the origin of the content. There are, nevertheless, important differences in UK consumer demand for US and UK content.

BTV's experience is that UK consumer demand for US TV VOD content (ie, excluding films) depends on the US content that is shown on linear TV in the UK. This US content is predominantly US TV series (eg, Desperate Housewives; The Sopranos).

By contrast, consumer demand for UK content is considerably more wide-ranging, because of the greater familiarity of UK customers with the range of content on linear TV.

BTV viewer patterns, June 2008

BT has also looked at the viewing behaviour of those BTV customers who watch the most popular US content on the BTV service, which is content from [CONFIDENTIAL]. BT looked at viewer behaviour during the month of June 2008, for those of its customers who subscribe to its TV Pack service, which is [CONFIDENTIAL]% of all of its subscribers. It noted that those viewers who watched the most popular US content actually also watched more [UK] content than

the average⁴. These findings suggest to BT that US and UK content may be essentially complementary rather than substitutable.

The tables below summarise BT's findings. [CONFIDENTIAL]

Broad differences in viewer patterns

[CONFIDENTIAL]

[CONFIDENTIAL]

On the other hand, the table below shows that [CONFIDENTIAL] This table looks at the average number of views per unique customer for the top 40 assets by number of views in June 2008:

[CONFIDENTIAL]

⁴ For the purposes of its analysis, BT defines a 'viewer' as a customer of the TV Pack during June 2008 who made at least one viewing of the relevant content [CONFIDENTIAL] during June 2008.

Vast majority of films shown by BTV are US films

[CONFIDENTIAL]

In summary, BT considers that the distinctive consumer demand for US and UK content means that the Kangaroo VOD service would not face adequate competitive constraints from on-demand VOD service providers, which focus less on UK content.

In this regard, the Kangaroo parties are unlikely to face significant competitive constraints from operators such as Joost and Babelgum, who do not appear to focus on UK content.

3. Consumer demand for TV VOD is distinct from demand for film VOD content

To begin with, it appears that the BBC's iPlayer does not include any film content. This is also the case for ITV's VOD service (www.itv.com). Channel 4's 4oD does provide a VOD film service, but it has a separate and higher pricing structure for it films.

Also, in assessing the substitutability of the Kangaroo parties' TV VOD service and the supply of films, in BT's view, the supply of films via DVD (including LOVEFiLM) can be excluded from this analysis. In BT's view, the particular attraction of VOD services is that they are immediately available to consumers. Consumers do not have to deal with the inconvenience and delay of travelling to the local DVD rental store or awaiting the arrival of a DVD in the post in order to watch a film they wish to view.

TV VOD services can broadly be distinguished from film VOD services, on the basis that :

- TV VOD is of shorter duration and can therefore be more readily consumed;
- [CONFIDENTIAL]

- In terms of pricing structure, the retail pricing of film VOD tends to be materially higher than the retail pricing of TV VOD :
 - The 4oD service, for example, supplies films for rent from £1.99 per film; its TV VOD offering, on the other hand, is free (with the exception of certain US drama, for which £0.99 per programme is charged)⁵.
 - BTV retails its PPV film VOD service at £1.99-3.95. This compares with prices from £0.79 for its PPV TV VOD content.
 - The Skyplayer VOD service does not currently offer any film VOD to consumers who are not already subscribers to its pay TV service. For those who subscribe to its ‘basic’ TV service, it charges £3.99 per VOD film, whereas its TV VOD service is either free or priced at £1, depending on the content.⁶

In BT’s view, the geographic scope of the market for the supply of on-demand TV VOD is the UK.

B. Content delivery platform issues

1. IPTV/Internet TV platforms

In BT’s view, no distinction should be made, for market definition purposes, between PC and TV-based platforms for the provision of TV VOD services.

An important distinguishing feature for consumers is that, whereas IPTV services are TV-based services (and can be viewed over the main TV in the living rooms of homes), Internet-based services have generally been provided via PCs and may have been less likely to be viewed as part of living room entertainment. This point was noted by the Competition Commission in its December 2007 report on *Sky/ITV*. The Competition Commission distinguished TV-over-the-Internet services from IPTV and TV services more generally as follows:

“This [TV-over-the-Internet] content cannot yet be readily viewed on main television sets, suggesting that it may not be a good substitute for many viewers. Although devices are starting to come to market that facilitate this, they are not yet widespread and the quality of the service is dependent on the quality of the underlying broadband network. We understand, for example, that the picture quality of television-over-the-Internet services can often be inferior to that available on other digital platforms and there can be delays while material is being

⁵ <http://www.channel4.com/4od/prices.html>

⁶ <https://skyplayer.sky.com/findoutmore/>

downloaded. Television over the Internet is currently less well adapted than conventional broadcast technologies to situations where a large number of viewers attempt to watch content simultaneously, as they might in the case of primetime drama, soap operas or major sports events.” (para. 4.25 of the report)

On the other hand, the Competition Commission found that “services over the IPTV platform offer a certain level of competitive constraint within an all TV market” (para. 4.71).

It is useful to note that, since the above Competition Commission report, the BBC announced that its Internet-TV iPlayer service would be available, with immediate effect, to all 3.5 million Virgin Media customers over the Virgin Media cable TV platform :

“As of today, Virgin Media customers will be able to catch up on their favourite BBC programmes by pressing the red button on any BBC channel.

Access to BBC iPlayer through Virgin Media's EPG (Electronic Programme Guide) menu is due this summer”.

(BBC press release, 30 April 2008,

http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/04_april/30/iplayer.shtml)

Virgin Media has stated that in the period from the launch of iPlayer on the Virgin Media cable platform, on 1 June 2008, to 21 July 2008, there had been 10.5 million views of iPlayer content.⁷

Also, on 13 May 2008, Media Week reported that the ITV is expected to launch its content on Virgin Media’s video on demand service in the coming months. Channel 4 has been providing content via this Virgin Media service since last year.

In other words, the provision of Internet-TV services via televisions is already occurring on a major scale in the UK. Also, the separate joint venture between the BBC and ITV, which was announced on 6 May 2008, to launch a free digital satellite service, may well in the future provide a further vehicle for the provision of the Kangaroo service via televisions

(http://www.bbc.co.uk/pressoffice/pressreleases/stories/2008/05_may/06/freesat.shtml).

2. Personal Video Recorders (‘PVRs’)

In BT’s view, PVRs would impose only a limited competitive constraint on the pricing of on-demand TV VOD services. This is because :

First, the overlap of content being provided over PVRs and on-demand TV VOD services is likely to be relatively limited :

⁷ <http://pressoffice.virginmedia.com/phoenix.zhtml?c=205406&p=irol-newsArticle&ID=1176956&highlight=>

- The content available on a PVR is limited by capacity constraints on the PVR. Currently, the capacity of most PVRs is limited to around 40-80 hours of programming content. This compares very unfavourably to the thousands of hours of programming content that the Kangaroo parties could make available via the Kangaroo service.
- A consumer can use his PVR to record programming that is being broadcast, or will be broadcast, on linear TV. The PVR cannot be used to record previous broadcasts. This means that consumer choice is relatively limited.

Second, the consumer experience of PVRs is quite different to the consumer experience of on-demand TV VOD service. PVRs are used solely to record and watch a limited amount of TV content in which the consumer has a particular interest; in order to do so, of course, the consumer has to take steps to ensure that the content he wishes to watch is duly recorded. Also, the consumer cannot view the content that he has arranged to record until that content has been broadcast on linear TV.

This service is very different to the service provided by on-demand TV VOD providers, which provide a wide range of TV content, through which the consumer can browse and view whenever he wishes. Browsing is a particularly important benefit of on-demand TV VOD, given that, as Ofcom has noted, people in the UK spend an average of 3.6 hours each day watching television⁸.

3. The Apple, Microsoft and Sony platforms

The OFT Decision notes that Kangaroo parties have argued the following :

“Their strong positions in the UK linear TV market and strong UK brands, they argue, provide only limited benefits with regards to VOD services when faced with competition from global companies such as Apple, Microsoft, Sony and Sky.....In particular, the parties cite the competitive advantages that certain players can leverage from linking their VOD service to popular hardware, such as Apple’s iPod, Microsoft’s Xbox and Sony’s Playstation/PSP, which may lead them to reduce the price of content to drive hardware sales.” (para. 15 of the OFT Decision)

In BT’s view :

- According to Apple, its VOD services can be purchased by consumers from its iTunes on-line store and viewed on PCs, iPods, iPhones and on TVs, via Apple TV⁹. Apple would, however, be dependent on the Kangaroo parties for content if it wished to meet consumer demand for UK TV VOD content and, accordingly, is unlikely to impose a significant competitive constraint on the Kangaroo service.
- Microsoft’s Xbox and Sony’s Playstation/PSP enable consumers to watch Internet-based VOD via their TVs. In BT’s view, however, this is not a material

⁸ The Nations and Regions Communications Market, May 2008; <http://www.ofcom.org.uk/research/cm/cmnr08/uksummary.pdf>

⁹ See eg, Apple UK press release, 4 June 2008 : http://www.apple.com/uk/pr/2008/06/04062008_movies.html

reason why consumers purchase this Microsoft and Sony hardware; purchasers are essentially interested in the interactive digital games features available via this hardware. Accordingly, it seems unlikely that Microsoft and Sony would reduce the price of VOD content available via their hardware, in order to drive hardware sales, particularly as there is currently only relatively limited VOD content available via the Xbox Live and the PSP consoles. Also, Microsoft and Sony would be dependent on the Kangaroo parties for content if it wished to meet consumer demand for UK TV VOD content and, accordingly, they are unlikely to be able to impose a significant competitive constraint on the Kangaroo service.

III. The market position of the Kangaroo parties

The Kangaroo parties have a particularly strong position in the retail supply of linear TV programming in the UK :

- They account for 70% of viewing across all TV platforms; for analogue TV alone, they account for over 90% of viewing; also, on the DTT platform, which is the most popular individual platform, they account for over 80% of viewing¹⁰.
- They are collectively responsible for 92% of investment in UK-origin first run TV programming (in 2006)¹¹. The collective in-house production by the BBC and ITV accounts for around 60 per cent of programming created in the UK. Also, BBC Worldwide holds rights of first refusal in relation to the commercialisation of this BBC content via VOD (outside the iPlayer window).¹² In addition, the Kangaroo parties control “a significant portfolio of VOD syndication rights in respect of independently-produced UK content.”¹³

It can be expected that the Kangaroo parties will aim to leverage their combined market power in the retail supply of linear TV programming in the UK into the emerging market for the supply of on-demand TV VOD in the UK.

The importance of the Kangaroo parties’ content for the development of VOD services in the UK is already apparent to BTV. [CONFIDENTIAL]

IV. The substitutability, at the wholesale level, of content from the various Kangaroo parties.

The parties’ on-demand content is substitutable to an important extent.
[CONFIDENTIAL]

¹⁰ CC Report on the acquisition by British Sky Broadcasting Group Plc of 17.9 per cent of shares in ITV Plc, December 2007, Figure 2 (at p.43) and Figure 3 (at p.45).

¹¹ Para. 28 of the OFT Decision.

¹² Para. 67 and footnote 13 of the OFT Decision.

¹³ Para. 68 of the OFT Decision.

[CONFIDENTIAL]

V. Concerns regarding possible Significant Lessening of Competition ('SLC') arising from the Kangaroo venture

The following factors suggest that the creation of the Kangaroo joint venture may give rise to a SLC :

- The Kangaroo parties are, individually, very major players and direct competitors at various levels of the supply chain for TV and on-line content. They are, individually, very well capable of establishing their own separate and competing on-demand services; this is evidenced by, for example, the particular success of the BBC's iPlayer, along with ITV's ITV.com and Channel 4's 4OD service. It would, therefore, appear that there is a real prospect that the creation of the Kangaroo joint venture could lead to a substantial lessening of competition, resulting in reduced innovation, reduced product choice for consumers and increased prices.
- The Kangaroo parties control a vast library of very valuable archive content. In particular, together they control the great majority of all UK-produced TV content. There is a very real possibility that, by providing this vast library of content on the Kangaroo service, this service will become the main on-demand service in the UK. The 'tipping' in favour of the Kangaroo service may well be accelerated by :
 - the ability of the Kangaroo parties to cross-promote their service on their respective linear TV platforms;
 - the fact that the popularity of the Kangaroo service is likely to attract an increasing proportion of advertising revenues, which will be a significant source of future revenues for suppliers of on-demand content.
- In line with previous regulatory Decisions¹⁴, the relevant content controlled by the Kangaroo parties can be distinguished, in particular, from 'premium' content, such as live FA Premier League content or first-run blockbuster films from the 6 major US film studios, which drives take-up of BSkyB's pay TV service.
- The 'tipping' in favour of the Kangaroo service raises a number of potential competition concerns, including :

¹⁴ In particular, the OFT's December 2002 Decision regarding an alleged infringement by BSky of the Chapter II prohibition;
http://www.of.gov.uk/shared_of/ca98_public_register/decisions/bskybfinal1.pdf

- The extent to which, and the terms under which, the Kangaroo parties will, in the future, wholesale their content to competing retail on-demand operators. In this regard, the success of the BT Vision platform is dependent, to an important extent, on content from the Kangaroo parties; [CONFIDENTIAL]

Quite apart from concerns over possible future general refusals to supply content or future pricing of content, (as a result of competition between the Kangaroo parties being reduced), there is also the concern that the Kangaroo parties could seek to limit the choice and timing of availability of content. [CONFIDENTIAL] Further reductions, under future arrangements, in BTV's ability to determine the precise content it acquires from the Kangaroo parties and the timing of availability of this content will further hinder BTV's ability to compete effectively at the retail level.

- The extent to which the Kangaroo service may be in a position to obtain third party content on more favourable terms than those available to its retail competitors, leading to distortions of competition at the retail level.

Because of its likely market position, the Kangaroo service may very well be in a position to acquire third party content on more favourable terms than those available to competing retail platforms. The more favourable terms could be, for example, exclusivity, volume discounts, lower prices linked to purchases by the Kangaroo parties for their respective TV platforms, most favoured nation terms.

