

Denis Kelly
Inquiry Coordinator
Competition Commission
Victoria House
Southampton Row
London
WC18 4AD

John Ward
Managing Director

John.Ward@ngridwireless.com
Direct tel +44 (0)1926 416022
Direct fax +44 (0)1926 416441

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www.nationalgridwireless.com

Dear Mr Kelly

ANTICIPATED JOINT VENTURE BETWEEN BBC WORLDWIDE LIMITED, CHANNEL 4 TELEVISION CORPORATION AND ITV PLC RELATING TO THE VIDEO ON DEMAND SECTOR: PROJECT KANGAROO

Thank you for your letter of 16 July 2008. You have asked for our views on the proposed joint venture VOD service - known as "Kangaroo" - to be entered into between the BBC through BBC Worldwide Ltd, Channel 4 Television Corporation and ITV PLC (the JV partners).

We understand from your letter that the purpose of "Kangaroo" is to provide a single web-based service for on-demand TV to broadband devices to enable consumers to view or purchase long form audio-visual material, including recently broadcast and archive material belonging to the JV partners, as well as broadcast material from other third party broadcasters, such material to be available both on a free, rental or pay (own) basis. It appears that "Kangaroo" is also intended to be the vehicle through which these PSB JV partners syndicate the sale of content rights to third party platforms/video on demand providers.

You have asked whether we wish to make representations or provide information to you which may be relevant to your inquiry as to whether these proposed joint venture arrangements may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services, including the syndication of content rights for video on demand services in the UK.

National Grid Wireless welcomes the opportunity to provide input into your inquiry.

As background, National Grid Wireless (NGW) is a licensed operator of two of the UK's six Digital Terrestrial Television Multiplexes and is a founder member of Freeview. We are also one of two national UK providers of transmission infrastructure and networks to analogue and digital television and radio broadcasters. Consequently, we enable major media companies such as BBC, BSkyB, Channel 4, ITV, MTV, UKTV and Emap, amongst others to bring their TV and radio services to the UK audience. Currently 4 of the 6 multiplexes which comprise the DTT platform are controlled by entities owned by the JV partners.

Your letter sets out various possible areas to be covered in our response, and in respect of each of these we consider it pertinent to make the following observations;

Relevant Market (NGW's view of the services which the JV partners offer)

The JV partners are public service broadcasters who own and/or control significant volumes of high quality archive broadcast material that is attractive to end consumers.

In the explanatory note describing the proposed service lodged on the CC website, it is stated:

"1.9 Kangaroo will have a marketing budget to promote the service and shareholders themselves will promote the service through their own TV channels and other owned media."

and

"1.10 A significant amount of content available on the Kangaroo site will be widely available to view elsewhere on an on-demand basis – whether on the Parties' existing websites, on DVD retailers' websites, on TV platforms' on demand services (such as Virgin, Sky, or BT Vision), or on other VOD services accessible via the open Internet (availability of content to the Parties themselves, Kangaroo and to third parties being dependent on a range of factors)."

Given the unique content rights held by the parties, we believe that the relevant market for this inquiry should be centred on the 'Video-on-Demand' rights access arrangements for PSB archive content that is controlled by the parties. To this end, we would expect fair, reasonable and non-discriminatory terms to be applied by the JV partners in relation to their dealings with each other and with third parties in relation not only to any such promotion and VOD re-broadcast rights made available to other service providers but also to their rental/pay TV offerings where made across different service platforms.

Evolution of the JV Partners' service proposals

Technological Perspective

The current PC based web services over time will evolve into a service easily accessed via a more straightforward TV based solution. which will make this type of delivery mechanism easier to use and more attractive to the end consumer. Furthermore, as broadband connectivity to the home is improved over time the flexibility of the service is likely to improve dramatically especially the level of potential interactivity with the consumer.

Service Offering Perspective

The stated purpose of "Kangaroo" is to "provide additional choice with a wider and deeper range of content", than that provided on the JV partners' respective "linear broadcasting channels". General advertising on the Kangaroo site (i.e. not content related) is intended to be "sold by Kangaroo", where content is available on the Kangaroo service on a pay basis (whether rental or purchase), "the consumer will pay Kangaroo direct" and "where Kangaroo provides services to or through third party platforms, transactional arrangements will be between the consumer and the third party with Kangaroo separately receiving financial benefit from the platform".

Given these various stated intentions, as this new service evolves, the JV partners may decide to stop hosting separate VOD services on their respective websites which over time could reduce the number of direct buying points available to the consumer.

Also where it is intended that "Kangaroo" is the vehicle through which the JV partners syndicate the sale of content rights to third party platforms/video on demand providers, there is also a reduction in the number of direct and competing selling points available to other platform providers for such content.

To ensure other service providers can continue to compete to provide alternative VOD buying points, there may need to be clarification that this highly valuable collective of archive broadcast material will continue to be made available for VOD purposes to other TV service delivery platforms and VOD providers, on fair and reasonable terms.

The JV Partners' Competitors, Customers and Suppliers

In our view these would include the following:

Competitors; existing VOD content providers, e.g. Sky, VirginMedia, Sony, Five, Apple etc.
existing archive content aggregators eg Top-up-TV

Customers; for broadcast content; the consumer
for advertising space: broadcasters, platform operators, e.g. Sky,
VirginMedia, BTVision, and advertisers
Suppliers; other broadcasters, production companies, ISPs, creative houses,
conditional access service providers, call centres.

Current and Future Competition in the relevant markets

Existing VOD offerings include those from BBC, ITV, Channel 4, Five alongside commercial VOD services offered by Sky, VirginMedia and BT Vision as well as nVOD services from Top Up TV. Furthermore there are alternative web-based TV services, e.g. Joost, Babelgum, and User Generated Content, e.g. YouTube, etc.

Future competition may be influenced by the ease of use of the user interface aligned to effective search / scheduling tools in conjunction with attractive and relevant content. Clearly from a search / scheduling perspective Google may prove to be a significant player in this market in the future alongside strong content sources such as Sky, Setanta, National Geographic, Discovery, etc.

Barriers to Entry to the VOD Market

In order to drive consumers to use this proposed new on-line service, the JV partners may enter into arrangements with "Kangaroo" which serve to restrict access to their respective broadcast archives by other platforms / service providers. This would create a barrier to entry for others wishing to launch VOD service.

Effect of the JV on Current and Future Customers

The introduction of a single aggregation point for PSB content via the web will facilitate ease of access and enhance the ease of adoption of VOD services by the consumer. However, the way in which the content is scheduled / searched via the system utilised by the aggregator may limit the visibility of third party content.

Summary

We see the development of web based TV services as a natural evolution of the content consumption market as demonstrated by the significant interest generated by the recent launch of the BBCiPlayer service. The creation of "Kangaroo" service may be a sensible approach for the parties to maximise the availability of their content to the consumer in a more effective and user friendly manner through a common aggregator approach. However, the key issues that we would wish to be considered and addressed in terms of the competitive position of such an aggregator are, (i) how readily accessible the content carried on this service would be to other platform / service operators, (ii) how readily accessible the service would be to other content owners, and (iii) what degree of bias would be applied to scheduling / search within the common system.

We confirm we are content for a copy of this letter to be published on your website. Please do not hesitate to contact me with any specific issues / questions relating to its contents.

Yours sincerely

John Ward
Managing Director