

**British Sky Broadcasting Group plc
and
Manchester United PLC**

A report on the proposed merger



MONOPOLIES AND MERGERS COMMISSION

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**Presented to Parliament by the Secretary of State for
Trade and Industry by Command of Her Majesty
April 1999**

This report was submitted by the Monopolies and Mergers Commission (MMC) to the Secretary of State on 12 March 1999, before the MMC was dissolved, and its functions were transferred to the Competition Commission. The MMC was dissolved on 1 April as a result of the coming into force of section 45 of the Competition Act 1998.

Members of the Monopolies and Mergers Commission as at 12 March 1999

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¹These members formed the Group which was responsible for this report under the chairmanship of Dr D J Morris.

Note by the Department of Trade and Industry

In accordance with section 83(3) and (3A) of the Fair Trading Act 1973, the Secretary of State has excluded from the copies of the report, as laid before Parliament and as published, certain matters, publication of which appears to the Secretary of State to be against the public interest, or which he considers would not be in the public interest to disclose and which, in his opinion, would seriously and prejudicially affect certain interests.

The omissions are indicated by a note in the text or, where space does not permit, by the symbol ✂.

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Part I

Summary and Conclusions

1 Summary

1.1. On 29 October 1998 the Secretary of State referred to us the proposed acquisition by British Sky Broadcasting Group plc (BSkyB) of Manchester United PLC (Manchester United). Our terms of reference are in Appendix 1.1. We have concluded that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a merger situation qualifying for investigation.

1.2. BSkyB is a vertically integrated broadcaster which buys TV rights, including those for sporting events, makes some of its own programmes, packages programmes from a range of sources into various channels, and distributes and retails these channels to its subscribers using its direct-to-home satellite platform as well as selling them wholesale to other retailers using different distribution platforms.

1.3. On all relevant measures, Manchester United is the strongest English football club. Its football-related activities include the supply of TV rights for its matches. At present the rights to Manchester United's Premier League matches, together with those of other Premier League clubs, are sold collectively by the Premier League itself. This arrangement is currently the subject of a Restrictive Practices Court (RPC) case brought by the Director General of Fair Trading.

1.4. We have concluded that the relevant football market in which Manchester United operates is no wider than the matches of Premier League clubs. We considered whether the broadcasting market in which BSkyB operates ought to comprise both pay TV and free-to-air TV and concluded that it was more appropriate to treat pay TV as a separate market. Based primarily on considerations of substitutability, we concluded that the relevant market for our purposes was for sports premium TV channels.

1.5. Except for small niche channels, BSkyB is currently the only provider of sports premium channels. Entry into this market depends crucially upon the ability of a channel provider to obtain the appropriate live sports rights. We think it unlikely that there are enough such rights to sustain many sports premium channels and BSkyB currently provides three. BSkyB's very high market share together with the difficulties of entry lead us to conclude that BSkyB has market power in the sports premium channel market.

1.6. In considering the public interest consequences of the merger, we looked primarily at its effects on competition among broadcasters for live Premier League rights. Because of uncertainties about the outcome of the RPC case on the collective selling of Premier League rights, we considered four scenarios, one or other of which may be expected to occur.

1.7. Our first scenario involved the continuation of existing collective selling arrangements and no other mergers between broadcasters and Premier League clubs. We have concluded that under this scenario, BSkyB would, as a result of the merger, gain influence over and information about the Premier League's selling of rights that would not be available

to its competitors. It would also benefit from its ownership stake in Premier League rights, providing a further advantage in the bidding process.

1.8. Taken together, these factors would significantly improve BSkyB's chances of securing the Premier League's rights. We would expect this to influence the behaviour of BSkyB's competitors causing them to bid more cautiously than would otherwise be the case and, in some cases, even not to bid at all. This would enhance BSkyB's already strong position arising from its market power as a sports premium channel provider and from being the incumbent broadcaster of Premier League football. The effect would be to reduce competition for Premier League rights leading to less choice for the Premier League and less scope for innovation in the broadcasting of Premier League football.

1.9. Under our other scenarios we have concluded that:

- (a) If the live rights of Premier League clubs were to be sold on an individual basis and there were no other mergers between broadcasters and clubs, BSkyB would, as a result of the merger, have substantial advantages over other broadcasters competing for the rights. This would have adverse effects for competition similar to those we identified under our first scenario.
- (b) If existing selling arrangements continued and the BSkyB/Manchester United merger were to precipitate a further merger between a broadcaster and a Premier League club, the effects on competition of the merger between BSkyB and Manchester United would be broadly similar to those of our first scenario. If there were several mergers between broadcasters and Premier League clubs precipitated by the BSkyB/Manchester United merger, then we believe that collective selling would continue only if broadcasters agreed among themselves to share the rights, which would have at least as adverse an effect on competition as our first scenario.

1.10. If rights were sold on an individual basis and there were several mergers between broadcasters and Premier League clubs precipitated by the BSkyB/Manchester United merger, all of the feasible outcomes would be less competitive than the situation in which rights were individually sold and no broadcaster/Premier League club mergers had occurred.

1.11. In most of the situations described in paragraphs 1.7 to 1.9, the merger would enhance BSkyB's ability to secure Premier League rights in future. We would expect this further to restrict entry into the sports premium channel market by new channel providers, causing the prices of BSkyB's sports channels to be higher and choice and innovation less than they otherwise would be. Reduced entry by sports premium channel providers would feed through into reduced competition in the wider pay TV market.

1.12. We conclude that, under all of the scenarios described in paragraphs 1.7 to 1.9, the merger may be expected to reduce competition for Premier League rights with the consequential adverse effects we have identified.

1.13. We have based our public interest conclusions mainly on the effects of the merger on competition among broadcasters. However, we also think that the merger would adversely affect football in two ways. First, it would reinforce the existing trend towards greater inequality of wealth between clubs, thus weakening the smaller ones. Second, it would give BSkyB additional influence over Premier League decisions relating to the organization of football, leading to some decisions which did not reflect the long-term interests of football. On both counts the merger may be expected to have the adverse effect of damaging the quality of British football. This adverse effect would be more pronounced if the merger precipitated other mergers between broadcasters and Premier League clubs.

1.14. We were unable to identify any public interest benefits from the proposed merger. We therefore conclude that the proposed merger between BSKyB and Manchester United may be expected to operate against the public interest.

1.15. We considered whether the adverse effects we have identified could be remedied by undertakings by BSKyB. We did not find any that we regarded as effective. We think that the adverse effects are sufficiently serious that prohibiting the merger is both an appropriate and a proportionate remedy. Accordingly, we recommend that the acquisition of Manchester United by BSKyB should be prohibited.