

Vivendi SA
and
British Sky Broadcasting Group plc

A report on the merger situation



COMPETITION COMMISSION

Vivendi SA and British Sky Broadcasting Group plc

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**Presented to Parliament by the Secretary of State for
Trade and Industry by Command of Her Majesty
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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 12 November 1999, the Secretary of State for Trade and Industry referred to us for investigation and report the acquisition by Vivendi SA (Vivendi) of a shareholding in British Sky Broadcasting Group plc (BSkyB) (see Appendix 1.1 for the terms of reference).

1.2. Vivendi is a public company listed on the Paris Stock Exchange, its main areas of activity being utilities and communications. It has a 49 per cent shareholding in Canal+ SA (Canal+) which operates pay-TV services in France and a number of other EC countries. BSkyB is the leading supplier of pay-TV services in the UK. It accounts for about 50 per cent of pay-TV subscribers, and also has a strong position in supply of content, particularly as a result of having acquired rights to premium sport and films, a position in the market it has built up through its innovation and investment.

1.3. In July 1999 Vivendi acquired 24.44 per cent of the shares in BSkyB and the right to appoint a director to its board. The largest shareholder in BSkyB is News International plc (News International) with almost 40 per cent of its shares, and with the right to appoint 5 of its 14 directors; News International is a wholly-owned subsidiary of The News Corporation Ltd (News Corporation). Notwithstanding the degree of control which News International is able to exercise over the policy of BSkyB, we have concluded that Vivendi acquired the ability materially to influence the policy of BSkyB during the four months preceding the date of the reference. We have also concluded that Vivendi is to be treated as having thereby acquired control of BSkyB for the purpose of the Fair Trading Act 1973, and that a merger situation qualifying for investigation has been created.

1.4. The main concerns expressed to us about the merger situation related to the acquisition of broadcasting rights for sports and films, and the supply of conditional access technology. The availability of programme rights, particularly for sport and films, is of great importance to the ability of different systems and channel providers to compete. Conditional access systems, which allow programmes to be unscrambled only for subscribers, are also essential for the operation of pay-TV systems.

1.5. In relation to sports rights, we consider that the merger situation is unlikely to result in any significant enhancement of the position of BSkyB, which is already a strong one. The key national rights are unlikely to be affected by collaboration, and there is insufficient reason for us to expect that the merger situation would materially impact on BSkyB's acquisition of rights to international events if joint bidding occurred. Further, there is the prospect that any anti-competitive effects of collaborative bidding could give rise to intervention from the national or EC competition authorities. We do not, therefore, expect that the merger situation would have an adverse effect on the acquisition of sports rights in the UK or on competition between pay-TV operators. For similar reasons, we do not expect the merger situation would have an adverse effect on the acquisition of film rights.

1.6. NDS Group plc (NDS), in which News Corporation owns the majority of shares, and Société Européenne de Contrôle d'Accès (SECA), in which Canal+ has a 50 per cent shareholding, are the main suppliers of digital conditional access technology in the UK and there was concern about the effect of the merger situation on competitors to BSkyB, in particular

ONdigital plc (ONdigital), supplied by SECA. However, we found insufficient evidence to expect that SECA would restrict support for ONdigital, or abuse the information to which it would have access, since either action could damage SECA and possibly Canal+, and given the contractual provisions currently in place. We recognize the potential for a degree of convergence between the NDS and SECA systems, but there is a general consensus that consumers might benefit from convergence or interoperability between systems and it is far from certain what form such convergence might take. We therefore do not expect that there would be adverse effects of the merger situation on the supply of conditional access technology.

1.7. We have concluded that this merger situation may not be expected to operate against the public interest. However, the pay-TV market is currently evolving rapidly as a result of technological and other developments, and would merit continued scrutiny by the regulatory authorities.