



DETERMINATION OF MERGER NOTIFICATION M/15/069 - ITV / UTV

Section 21 of the Competition Act 2002

Proposed acquisition by ITV Broadcasting Limited of UTV Limited

Dated 12 January 2016

Introduction

1. On 1 December 2015, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby ITV plc (“ITV”), through its wholly-owned subsidiary ITV Broadcasting Limited (“ITV Broadcasting”), would acquire sole control of UTV Limited from UTV Media plc (“UTV Media”).
2. Given that both ITV and UTV Limited carry on a “media business” within the State (as defined in section 28A(1) of the Act) the proposed transaction constitutes a “media merger” for the purposes of Part 3A of the Act.

The Proposed Transaction

3. The proposed transaction is to be implemented pursuant to a share purchase agreement (“SPA”) dated 18 October 2015 between ITV Broadcasting and UTV Media, whereby ITV Broadcasting would acquire the entire issued share capital of UTV Limited and its wholly-owned subsidiary UTV Ireland Limited (“UTV Ireland”).
4. Following the implementation of the proposed transaction, ITV will have sole control over the whole of UTV Media’s television business. UTV Media’s radio and other businesses are not part of the proposed transaction.

The Undertakings Involved

ITV and ITV Broadcasting

5. ITV is a public limited company headquartered in London, England and listed on the London Stock Exchange. It is involved, mainly in the United Kingdom and also in other European countries and Australia, in the television broadcasting sector.

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.



6. Through its wholly-owned subsidiary ITV Studios Ltd (“ITV Studios”),² ITV is involved in the production of television content.³ Through its wholly-owned subsidiary ITV Broadcasting, ITV is involved in the supply of television channels (namely, ITV, ITV2, ITV3, ITV4, ITV Encore, ITVBe and CITV).
7. Within the State, ITV Studios supplies television content to UTV Ireland for its *UTV Ireland* channel.⁴ ITV Studios does not supply television content to any other television channel within the State.⁵
8. Although ITV’s television channels are not licensed for broadcast in the State by the Broadcasting Authority of Ireland (“BAI”)⁶, certain ITV television channels are nonetheless available to television viewers in the State. For example, the geographical proximity of parts of Ireland to the UK results in “spill-over” effects whereby ITV channels can be viewed free to air (“FTA”) within the State. In addition, some pay-TV broadcasting platforms include the option for viewers in the State to access some ITV channels.⁷
9. ITV is involved in the supply of television advertising space within the State to the extent that Irish viewers of ITV programmes will see advertising on ITV channels. However, UK viewers, rather than Irish viewers, are the primary audiences for advertising on ITV channels.
10. For the financial year ending 31 December 2014, ITV plc’s worldwide turnover was approximately €3.667 billion of which €[...]⁸ million was generated within the State.

UTV Media, UTV Limited and UTV Ireland

11. UTV Media, headquartered in Belfast Northern Ireland, is a public limited company listed on the London and Dublin stock exchanges. Specifically with respect to the Commission’s analysis of the proposed transaction, UTV Media, through its wholly-owned subsidiaries UTV Limited and UTV Ireland, is involved in the television broadcasting sector as a supplier of television channels.⁹
12. UTV Limited supplies the *UTV Northern Ireland* television channel for broadcast on broadcasting platforms in Northern Ireland and UTV Ireland¹⁰ supplies the *UTV Ireland*

² For more information on ITV Studios, see <<https://itvstudios.com>>.

³ The European countries where ITV television content is shown, either on ITV channels or television channels operated by third parties, are Germany, France, Denmark, Sweden, Finland and Norway, as well as the UK. Notification page 8.

⁴ This arrangement commenced in 2015 and replaces the previous agreement, which terminated at the end of 2014, to supply the TV3 channel with television content in the State.

⁵ Similarly, ITV Studios does not supply television content to any television channel in Northern Ireland other than UTV Limited’s *UTV Northern Ireland* television channel.

⁶ The BAI, established on 1 October 2009 under the Broadcasting Act 2009, regulates content across all broadcasting within the State. Two types of licence are issued by the BAI: (a) television programme service contract, under section 70 of the Broadcasting Act 2009, and (b) content provision contract, under section 71 of the Broadcasting Act 2009.

⁷ ITV states that it supplies its television channels other than ITV1 (i.e. ITV2, ITV3 and ITV4) to the Virgin Media television platform in the State. In addition, on subscription satellite platforms, it may be possible for subscribers to manually adjust their satellite boxes to allow access to spill-over channels. Notification page 11.

⁸ Calculated using the annual ECB exchange rate for 2014 of €1 = £0.806.

⁹ As noted above, the proposed transaction concerns only the acquisition of UTV Media’s television business. UTV Media will retain control of its non-television businesses. For more information on UTV Media, including its involvement in the radio and digital broadcasting sectors, see <<http://utv.ie>>.

¹⁰ As indicated in paragraph 3, UTV Ireland is an indirect wholly-owned subsidiary of UTV Media. UTV Limited is incorporated in Northern Ireland and UTV Ireland is incorporated in the State.



television channel for broadcast on broadcasting platforms in the State. Within the State, the *UTV Ireland* channel is broadcast under license issued by the BAI.¹¹

13. Within the State, UTV Ireland operates the *UTV Ireland* television channel. Most television content shown on the *UTV Ireland* channel (approximately 60-65%) is supplied by ITV Studios.¹²
14. Within the State, UTV Ireland, through its Dublin-based sales team, sells advertising space on its *UTV Ireland* channel.¹³
15. For the financial year ending 31 December 2014, UTV Limited's worldwide turnover was approximately €[...] million,¹⁴ of which €[...] million was generated within the State.

Rationale for the Proposed Transaction

16. In the notification, the parties state that:

*"ITV believes that UTV Limited's strategic objectives in Northern Ireland and Ireland are closely aligned with ITV's own objectives in Great Britain, and that the Proposed Transaction is the best way to take UTV Limited's television business forward."*¹⁵

Third Party Submissions

17. One submission was received which raised concerns about the licensing arrangements for UTV Ireland following the completion of the proposed transaction. In particular, the submission argued that UTV Ireland should be licensed under section 70, rather than section 71, of the Broadcasting Act 2009 and the *UTV Ireland* channel should be available FTA on Saorview.¹⁶
18. The Commission, as part of its review of the proposed transaction, has taken account of the points raised in the third party submission. The Commission considers that any competitive effects concerning the licensing of the *UTV Ireland* channel or placement of the *UTV Ireland* channel on Saorview¹⁷ do not specifically arise from the proposed transaction and are consequently outside of the Commission's remit in its review of the proposed transaction.¹⁸

¹¹ UTV Ireland is licensed by the BAI, pursuant to section 71 of the Broadcasting Act 2009, to operate under a Content Provision Contract.

¹² Notification page 9. Other suppliers of television content in the State include RTE and Coco Media.

¹³ The parties state that UTV Limited has some involvement, from its Belfast sales office in the sale of advertising space on *UTV Ireland*. The parties state also that ITV already sells advertising airtime and sponsorship on behalf of the *UTV Northern Ireland* and *UTV Ireland* channels to customers based in the UK (outside Northern Ireland) and that ITV also sells teleshopping slots on both the *UTV Northern Ireland* and *UTV Ireland* channels. Notification page 10.

¹⁴ Calculated using an annual ECB exchange rate for 2014 of €1 = £0.806. These turnover figures include UTV Ireland which is a wholly-owned subsidiary of UTV Limited.

¹⁵ Notification page 5.

¹⁶ Saorview is a subscription-free digital television service that is received with an aerial and a Saorview receiver. For more information on Saorview see <<http://www.saorview.ie>>.

¹⁷ The two concerns are related as sections 70 and 77 of the Broadcasting Act 2009 require that television channels broadcast pursuant to a television programme service contract must be available FTA on any network (including Saorview, which is available for reception by the public in some or all of the State).

¹⁸ Licensing arrangements and the availability of a channel, or channels, on specified broadcasting platforms could in theory be remedies in the event that Commission made a finding that a proposed transaction gave rise to a substantial lessening of competition. The Commission does not need to make (and has not made) such a finding in this instance.



Competitive Analysis

Market Definition

19. The Commission has recently examined the television broadcasting sector in *M/15/039 - Liberty Global/TV3*.¹⁹ In its determination in that case, the Commission considered that the television broadcasting sector could be described as a supply chain involving television content, television channels, broadcasting platforms and television viewers.
20. Television content refers to (i) the production and recording of programmes for subsequent broadcast and viewing and (ii) the production of live programmes. Television channels acquire the rights to television content and arrange this content into a schedule of programmes to be shown at particular times.²⁰ Television broadcasting platforms provide the infrastructure whereby television content is broadcast to viewers. Television viewers are the final consumers of television programmes and advertisements broadcast on television.
21. There is a horizontal overlap in the activities of the parties with respect to the supply of television channels for broadcast on broadcasting platforms within the State. However, as described below the overlap is not significant. As both parties' television channels in the State carry advertisements, there is also arguably an overlap between the parties' activities in the supply of television advertising space in the State. There is also a vertical relationship between the parties within the State with respect to the supply by ITV Studios of television content to UTV Ireland.
22. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. For the reasons explained below, in this instance, it is not necessary for the Commission to define precise product or geographic markets because the Commission's conclusions would remain the same irrespective of the precise product or geographic market definition adopted. Consequently, the Commission is of the view that the issue of the appropriate product and geographic market can be left open in this instance.
23. However, for the purposes of reviewing the proposed transaction the Commission has examined the possible competitive effects of the proposed transaction within the State in relation to (i) the supply of television channels and (ii) the supply of advertising space. The Commission will also consider the vertical relationship between the parties within the State with respect to the supply of television content.

Competitive Effects Analysis

Supply of television channels

24. In relation to the overlap between the parties' activities in the supply of television channels, UTV Ireland estimates that it has a share of television viewers within the State

¹⁹ See

<<http://www.cpc.ie/enforcement/mergers/merger-notices/m15039-liberty-global-tv3>>.

²⁰ This form of broadcasting is called "linear" television, as distinct from "non-linear" television services which are available to viewers at times other than scheduled linear services.



of approximately [0-10]%.²¹ The combined market share of television viewers within the State for all of ITV's channels is approximately [0-10]%.²² Therefore, following implementation of the proposed transaction, the parties would have a combined market share in the State of less than [0-10]%. By comparison, the market share within the State is approximately 28% for all RTE channels and approximately 13% for all TV3 channels (including 3e). There are also many other television channels available in the State which are broadcast on a variety of broadcasting platforms and which will continue to act as a constraint on the merged entity following implementation of the proposed transaction.

25. In light of the above, the Commission considers that the proposed acquisition will not give rise to a substantial lessening of competition in the supply of television channels within the State.

Supply of television advertising

26. There is arguably an overlap between the parties' activities in the supply of advertising space given that within the State viewers will see advertising broadcast on ITV's channels and also broadcast on the *UTV Ireland* channel. However, as stated in paragraph 9, viewers within the State are not the target audience of individuals, firms, or organisations purchasing advertising space on ITV's channels. Consequently, any overlap between the parties' activities in the supply of television advertising space within the State will not be significant.

Supply of television content

27. There is a vertical relationship between ITV and UTV Ireland whereby ITV supplies television content to UTV Ireland for broadcast on its *UTV Ireland* channel. However, the proposed transaction does not give rise to vertical competition concerns since ITV only supplies television content within the State to UTV Ireland. It is also the case that ITV has limited market power as a supplier of television content in the State, given that its post-merger market share is likely to be less than 10% and there are other significant suppliers of television content active in the State. At present UTV Ireland purchases content from third party suppliers and the merged entity would be most likely to continue do so following the completion of the proposed transaction.

Conclusion

28. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

²¹ UTV Ireland states that this figure is based on AC Nielsen analysis of data for 2015.

²² The market share figures provided by the parties in the notification are based on AC Nielsen's Watch Ireland Report for the year 1 January – 31 December 2014.



Ancillary Restraints

29. The SPA between ITV Broadcasting and UTV Media contains a number of restrictive obligations on UTV Media. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.²³ Given the particular nature of the proposed transaction, the Commission considers that these obligations are directly related to and necessary for the implementation of the proposed transaction.

²³ In this respect, the Commission follows the approach adopted by the EU Commission in paragraph 20 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see <[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)>.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby ITV plc, through its wholly-owned subsidiary ITV Broadcasting Limited, would acquire sole control of UTV Limited from UTV Media plc will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect subject to the provisions of section 28C(1)²⁴ of the Competition Act 2002.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission

²⁴ Section 28C(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.
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