EN

Case No COMP/M.7288 - VIACOM/ CHANNEL 5 BROADCASTING

Only the English text is available and authentic.

REGULATION (EC) No 139/2004
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
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In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus […]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

To the notifying party:

Dear Sir/Madam,

Subject: Case M.7288 - Viacom/Channel 5 Broadcasting
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004[1]

1. On 4 August 2014**,** the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which the undertaking Viacom Inc. ("Viacom", United States) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Channel 5 Broadcasting Limited ("Channel 5", United Kingdom) by way of purchase of shares. Viacom is designated hereinafter as the "Notifying Party" and Viacom and Channel 5 are designated as "Parties" to the proposed transaction.

I. THE PARTIES

2. Viacom is a global entertainment content company that creates television programmes, motion pictures, short-form videos, application ("apps"), games,

[1] OJ L 24, 29.1.2004, p. 1 ("the Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU"') has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

Commission européenne, DG COMP MERGER REGISTRY, 1049 Bruxelles, BELGIQUE
Europese Commissie, DG COMP MERGER REGISTRY, 1049 Brussel, BELGIË

Tel: +32 229-91111. Fax: +32 229-64301. E-mail: COMP-MERGER-REGISTRY@ec.europa.eu.

consumer products, social media and other entertainment content. Viacom reaches audiences in over 160 countries and territories. Viacom is controlled by National Amusement Inc. ("NAI"), in turn controlled by Sumner Redstone, who also controls CBS Corporation ("CBS").

3. Channel 5 is one of the four UK Public Sector Broadcasters ("PSB"). Channel 5 operates three free-to-air ("FTA") television channels plus four time-shifted variants of those channels and one Pay-TV channel. Channel 5 also operates Demand 5, a catch-up and archive video-on-demand ("VOD") service accessible through connected TVs as well as on PC, tablet and mobile devices. Furthermore, Channel 5 owns a small production studio and its own advertising ("ad") sales house, Channel 5 Sales.

II. THE CONCENTRATION

4. The proposed transaction involves the acquisition of sole control of Channel 5 by Viacom. Pursuant to a Share Purchase Agreement dated 30 April 2014, Viacom will acquire the whole of the issued ordinary share capital of Channel 5 for consideration of an amount in cash of GBP 450 million (approximately EUR 547 million).

5. Therefore, the proposed transaction consists of a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

III. EU DIMENSION

6. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million[2] (Viacom: […]; Channel 5: […]). Each of them has an EU-wide turnover in excess of EUR 250 million (Viacom: EUR […]; Channel 5: […]), but only Channel 5 achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State, namely the UK.

7. The notified operation therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

IV. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

8. The Parties are both active in the provision of audio visual content in the UK.[3] Therefore, the Parties' activities overlap in: (i) the licensing/acquisition of broadcasting rights to audio visual content, (ii) the wholesale supply of television channels, (iii) the retail supply of audio visual content to end users and (iv) the supply of advertising.

A. Licensing/acquisition of broadcasting rights to audio visual content

Product market definition

9. Audio visual TV content comprises "entertainment products" (such as films, sport events, TV programmes, etc.) that can be broadcast via TV. TV broadcasting rights

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2 Turnover calculated in accordance with Article 5 of the Merger Regulation.

3 Viacom operates the following TV channels: BET, Colors, MTV, MTV Base, MTV Classic, MTV Dance, MTV Hits, MTV Live HD, MTV Music, MTV Rocks, VH1, VIVA, Nickelodeon, Nicktoons, Nick Jr., Nick Jr. 2, Comedy Central and Comedy Central extra. Channel 5 operates the following TV channels: Channel 5, 5*, 5USA and Demand5.

belong to the creators of these products, who license them to broadcasters (which then incorporate them into a linear stream of content – TV channel) or content platform operators which retail directly to end users on a VOD/Pay-Per-View basis.

10. The Notifying Party does not take a position on the delineation of the product market for licensing/acquisition of broadcasting rights to audio visual content.

11. In its past decisions, the Commission has identified separate product markets for the licensing of broadcasting rights for individual audio visual TV content for Pay-TV and for Free-To-Air ("FTA"), although it ultimately left open the exact product market definition.[4]

12. The Commission has also found that, from both a demand-side and supply-side perspective, certain types of content bought by Pay-TV operators are not substitutable with each other. Accordingly, the Commission has considered (i) sports events, (ii) premium films and (iii) other TV content (such as documentaries, youth programmes, etc.) as separate product markets, although it ultimately left open the exact product market definition.[5]

13. As regards the licensing of broadcasting rights for premium films, in past decisions, the Commission has identified separate markets for the following different exhibition windows, although it ultimately left open the exact product market definition: (1) Video-on-Demand ("VOD"); (2) Pay-per-view ("PPV"); (3) first Pay-TV window; (4) second Pay-TV window; and (5) FTA TV.[6]

14. In the present case, the Commission considers that the exact product market definition can be left open, as the proposed transaction does not give rise to competition concerns under any possible market definition.

Geographic market definition

15. The Notifying Party does not take a position on the delineation of the geographic market for the licensing/acquisition of broadcasting rights to audio visual content.

16. The Commission previously considered that the market for the licensing of broadcasting rights to audio visual TV content is either national in scope or potentially comprises a broader linguistically homogeneous area. However, the Commission left open the exact geographic market definition.[7]

17. In the present case, the Commission considers that the exact geographic scope of the market for the licensing/acquisition of broadcasting rights to audio visual content can be left open, as the proposed transaction does not give rise to competition concerns under any possible market definition.

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4 Commission decision of 21 December 2010 in Case M.5932 *News Corp/BSkyB*, paragraph 6.

5 Commission decision of 21 December 2011 in Case M.6369 *HBO/Ziggo/HBO Nederland*, paragraphs 18-21.

6 Commission decision of 21 December 2011 in Case M.6369 *HBO/Ziggo/HBO Nederland*, paragraph 18.

7 Commission decision of 2 April 2003 in Case M.2876 *Newscorp/Telepiù*, paragraph 62; Commission decision of 21 December 2010 in Case M.5932 *News Corp/BSkyB*, paragraphs 73-75.

B. Wholesale supply of television channels

Product market definition

18. TV channel broadcasters acquire or produce individual audio visual content and package it into TV channels. These TV channels are then broadcast to end users via different distribution infrastructures (for example cable, satellite, internet, mobile, etc.) either on a FTA basis or on a Pay-TV basis (individually or as part of so-called "channel bouquets").[8]

19. The Notifying Party does not take a position on the delineation of the product market for the wholesale supply of television channels.

20. In past decisions, the Commission has identified a wholesale market for the supply of TV channels. Within this market, the Commission has identified two separate product markets for (i) FTA channels and (ii) Pay TV channels.[9]

21. Within the market for the wholesale supply of Pay-TV channels, the Commission has also previously indicated that there is a differentiation between "basic" and "premium" Pay TV channels (for example premium sports and movies channels). However, it has left open whether these two categories of Pay TV channels constitute separate product markets.[10]

22. Finally, the Commission has also examined, but ultimately left open, whether the market should be further segmented by genre or thematic content (such as films, sports, news, youth channels, etc.).[11]

23. In the present case, the Commission considers that the exact product market definition can be left open, as the proposed transaction does not give rise to competition concerns under any possible market definition.

Geographic market definition

24. The Notifying Party does not take a position on the delineation of the geographic market for the wholesale supply of television channels.

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8 Commission decision of 20 September 2013 in Case M.6990 *Vodafone/Kabel Deutschland*, paragraph 30.

9 Commission decision of 18 July 2007 in Case M.4504 *SFR/Télé 2 France*, paragraphs 37-40; Commission decision of 21 December 2010 in Case M.5932 *News Corp/BSkyB*, paragraphs 80, 83 and 85; Commission decision of 21 December 2011 in Case M.6369 *HBO/Ziggo/HBO Nederland*, paragraph 24.

10 Commission decision of 2 April 2003 in Case M.2876 *Newscorp/Telepiù*, paragraph 76; Commission decision of 18 July 2007 in Case M.4504 *SFR/Télé 2 France*, paragraphs 41-42; Commission decision of 21 December 2010 in Case M.5932 *News Corp/BSkyB*, paragraph 85; Commission decision of 21 December 2011 in Case M.6369 *HBO/Ziggo/HBO Nederland*, paragraphs 24 and 27.

11 Commission decision of 2 April 2003 in Case M.2876 *Newscorp/Telepiù*, paragraph 76; Commission decision of 18 July 2007 in Case M.4504 *SFR/Télé 2 France*, paragraphs 41-42; Commission decision of 26 August 2008 in Case M.5121 *News Corp/Premiere*, paragraph 35; Commission decision of 21 December 2010 in Case M.5932 *News Corp/BSkyB*, paragraph 81.

25. In past decisions, the Commission considered that the market for the wholesale supply of television channels is either national in scope or potentially comprises a broader linguistically homogeneous area. However, it left open the exact geographic market definition. [12]

26. In the present case, the Commission considers that the exact geographic scope of the market for the wholesale supply of television channels can be left open, as the proposed transaction does not give rise to competition concerns under any possible market definition.

C. Retail supply of audio visual content to end users

Product market definition

27. On the retail market for the supply of audio visual content to end users, the suppliers of linear and non-linear TV services on the supply side, serve end-customers who wish to access such services on the demand side.

28. The Notifying Party does not take a position on the delineation of the product market for the retail supply of audio visual content to end users and considers that the exact product market definition can be left open.

29. The Commission has in the past identified separate markets for the retail supply of (i) FTA and (ii) Pay-TV services. Moreover, the Commission considered whether linear and non-linear services constitute separate product markets, but ultimately left open the exact product market definition.[13]

30. In the present case, the Commission considers that the exact product market definition can be left open, as the proposed transaction does not give rise to competition concerns under any possible market definition.

Geographic market definition

31. The Notifying Party does not take a position on the delineation of the geographic market for the retail supply of audio visual content to end users.

32. The Commission has previously found the market for the retail supply of audio visual services to end users to be national in scope (when considering the Pay-TV side of the market)[14] or, at most, to comprise linguistically homogeneous areas, such as the UK and Ireland.[15]

33. In the present case, the Commission considers that the exact geographic scope of the market for the retail supply of audio visual content to end users can be left open, as the

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[12] Commission decision of 21 December 2010 in Case M.5932 *News Corp/BSkyB*, paragraph 88.

[13] Commission decision of 25 June 2008 in Case M.5121 *News Corp/Premiere*, paragraph 21.

[14] See Commission decision of 15 April 2013 in Case M.5734 *Liberty Global Europe/Unitymedia*, paragraph 40; Commission decision of 18 July 2007 in Case M.4504 *SFR/Télé2 France*, paragraph 48.

[15] See Commission decision of 15 April 2013 in Case M.6880 *Liberty Global/Virgin Media*, paragraph 54.

proposed transaction does not give rise to competition concerns under any possible market definition.

D. Supply of advertising

Product market definition

34. The Notifying Party submits that the market for TV advertising should be considered as a whole and that it is not necessary to differentiate between FTA and Pay-TV. Furthermore, the Notifying Party submits that segmenting the TV advertising market by demographics would not reflect the reality of the market: the dynamic nature of programming allows broadcasters to compete with each other across multiple demographics over time.

35. In its past decisions, the Commission has drawn a distinction between online and offline advertising[16], based on two main factors: specificity and pricing. In terms of specificity, online advertising is capable of efficiently reaching a much more targeted audience and of allowing advertisers to know how many users have viewed or clicked on an advertisement. On the contrary, offline advertising is traditionally unable to provide these features. In terms of pricing, the two have different pricing mechanisms: whereas offline pricing is measured in general criteria of impacts viewed by consumers, online advertising can be bought in a number of ways (such as cost per thousand page views, or based on a "cost per click").

36. As regards online advertising, in its decision in the *Google/DoubleClick* case, the Commission considered a possible distinction between search and non-search advertising, but it ultimately left open the exact product market definition.[17]

37. As regards offline advertising, in its decision in the *News Corps/BSkyB* case, the Commission considered an overall market for all TV advertising in the UK.[18]

38. The large majority of respondents to the market investigation in the present case confirmed that TV advertising represents a separate product market and that it is furthermore not relevant to sub-divide the market for TV advertising by broadcasting method (FTA or Pay-TV).[19] A number of respondents also indicated that the line between online advertising and TV advertising is becoming increasingly blurred due, in particular, to the rise of non-linear (video-on-demand) viewing.[20]

39. The Commission has also considered whether the market for TV advertising should be further segmented by target audience. The market investigation showed that TV advertising space is usually procured on an annual basis and over a variety of target audiences (determined on the basis of a number of criteria, sometimes cumulative such as age, gender and socio-economic status) and that differentiation by targeted

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[16] Commission decision of 21 December 2010 in Case M.5932 *News Corps/BSkyB*, paragraph 262; Commission decision of 11 March 2008 in Case M.4731 *Google/DoubleClick*, paragraphs 45-46.

[17] Commission decision of 11 March 2008 in Case M.4731 *Google/DoubleClick*, paragraphs 48-56.

[18] Commission decision of 21 December 2010 in Case M.5932 *News Corps/BSkyB*, paragraph 267.

[19] See replies to Commission Questionnaire to customers and competitors of 4 August 2014, question 6.

[20] See replies to Commission Questionnaire to customers and competitors of 4 August 2014, question 6.

audiences is realised only at a later stage, when aggregators offer their clients TV advertising space tailored on their needs.[21] Therefore, since on the demand side there is no differentiation based on different types of audiences, the Commission considers that it is not necessary to further segment the TV advertising market by target audience.

40. In line with previous Commissions decision and in the light of the results of the market investigation, the Commission takes the view that TV advertising constitutes a separate market. As regards online advertising, the Commission considers that the exact product market definition can be left open, as the proposed transaction does not give rise to competition concerns under any possible market definition.

Geographic market definition

41. The Notifying Party does not take a position on the delineation of the geographic market for the supply of advertising.

42. As regards the supply of TV advertising, the Commission considered in the past the relevant geographic market to be national in scope.[22]

43. The market investigation in the present case confirmed that the market for TV advertising is national in scope.

44. As regards online advertising, in its past decisions the Commission has considered the geographic scope of the market to be divided alongside national or linguistic borders within the EEA.[23]

45. In line with previous decisions, the Commission takes the view that the market for TV advertising is national in scope. As regards online advertising, the Commission considers that the exact geographic scope of the market for online advertising can be left open, as the proposed transaction does not give rise to competition concerns under any possible market definition.

V. COMPETITIVE ASSESSMENT

46. The proposed transaction gives rise to horizontal overlaps between the Parties' activities in the markets for (i) the licensing/acquisition of broadcasting rights to audio visual content in the UK, (ii) the wholesale supply of television channels in the UK, (iii) the retail supply of audio visual content to end users in the UK, and (iv) the supply of advertising in the UK.[24]

47. The combined market share of the Parties does not exceed 20% in any of these markets and therefore, according to paragraph 18 of the Commission Guidelines on

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21 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, questions 7, 8 and 10.

22 Commission decision of 14 June 2013 in Case M.6866 *Time Warner/CME*, paragraph 68; Commission decision of 21 December 2010 in Case M.5932 *News Corps/BSkyB*, paragraph 270.

23 Commission decision of 11 March 2008 in Case M.4731 *Google/DoubleClick*, paragraph 84.

24 Since Channel 5 is only active in the UK, whereas Viacom is active in a number of EEA countries, the Parties' activities overlap only in the UK.

the assessment of horizontal mergers[25], the transaction does not give rise to any competition concerns. Given the high degree of concentration of the TV advertising market in the UK and the uncertainty regarding the future of Channel 5' ad sales house, the Commission's market investigation has focused on the market of TV advertising in the UK.

A. Licensing/acquisition of broadcasting rights to audio visual content in the UK

48. As regards the licensing of broadcasting rights for both Pay-TV and FTA (i.e. the supply side), Channel 5 does not license broadcasting rights to third parties in the UK.[26] As a result, there is no overlap between the Parties with regard to the licensing of broadcasting rights in the UK under any possible market definition.

49. As regards the acquisition of broadcasting rights (i.e. the demand side), both Viacom and Channel 5 purchase broadcasting rights to "Other TV content". In this market, the combined market share of the Parties would be well below 20% ([5-10]%), with an insignificant increment of [0-5]% brought about by the proposed transaction. The Notifying Party further confirmed that the combined market share of the Parties for the possible sub-markets of the acquisition of broadcasting rights for (i) FTA and (ii) Pay-TV is also well below 20%.

50. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the market for the licensing/acquisition of broadcasting rights to audio visual content in the UK.

B. Wholesale supply of television channels in the UK

51. Both Viacom and Channel 5 provide at the wholesale level a set of channels to television broadcasters or other distribution platforms. Viacom operates the majority of its channels as Pay-TV channels (it operates three FTA channels: Viva, BET and Colors), whereas Channel 5 operates the majority of its channels as FTA channels (Channel 5 only offers the High Definition version of its main FTA channel (Channel 5 HD) as a paying channel).

52. On the broader market for the wholesale supply of television channels, the Parties activities overlap to a negligible extent and, in any case, with a combined market share well below 20% in terms of viewing share ([5-10]%) and a limited increment of [0-5]%.

53. On the possible market for the wholesale supply of FTA channels, the combined market share of the Parties would still be well below 20% in terms of viewing share ([5-10]%) and with a negligible increment (less than [0-5]%).

54. On the possible market for the wholesale supply of Pay-TV channels, the combined market share of the Parties would be well below 20% in terms of viewing share ([10-20]%) with a negligible increment ([0-5]%). If considering a possible sub-market for

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25 Commission Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31 of 5.2.2004, p. 5).

26 Channel 5 has limited licencing activities in the UK. Channel 5 generated only […] in 2013 from its licensing activities.

for the wholesale supply of basic Pay-TV channels, the combined market share of the Parties would still be below 20% in terms of audience ([10-20]%), with a negligible increment of [0-5]%. Finally, no overlap would occur on the possible market for the wholesale supply of premium Pay-TV channels.

55. If considering a possible distinction by theme/genre, the combined market share of the Parties would be in any case below 20% ([0-5]% in terms of audience for "Other TV content").

56. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the market for the wholesale supply of television channels in the UK.

C. Retail supply of audio visual content to end users in the UK

57. Channel 5 makes its content available to consumers via broadcasting of FTA TV channels (linear) and its Demand 5 VOD service (non-linear), which is also free to access. Viacom operates almost exclusively at the wholesale level. Nonetheless, it retails some of its content to end users via VOD services available on its website which is not provided free. Finally, Viacom retails three linear UK FTA channels (Viva, BET and Colors).

58. Therefore, Viacom and Channel 5's retail activities overlap only on the possible markets for (i) the retail provision of linear FTA content and (ii) the market for the provision of non-linear content (combining non-linear FTA and non-linear pay content).

59. As regards the retail provision of linear FTA content, the combined market share of the Parties would be well below 20% in terms of audience ([5-10]%) and with a negligible increment (less than [0-5]%).

60. Viacom is only active in the retail supply of non-linear pay services, while Channel 5 is only active in the retail supply of non-linear free services. If considering a possible market for the provision of non-linear content (combining non-linear FTA and non-linear pay content), the combined market share of the Parties would be insignificant and, in any case, far below 20% ([0-5]%).

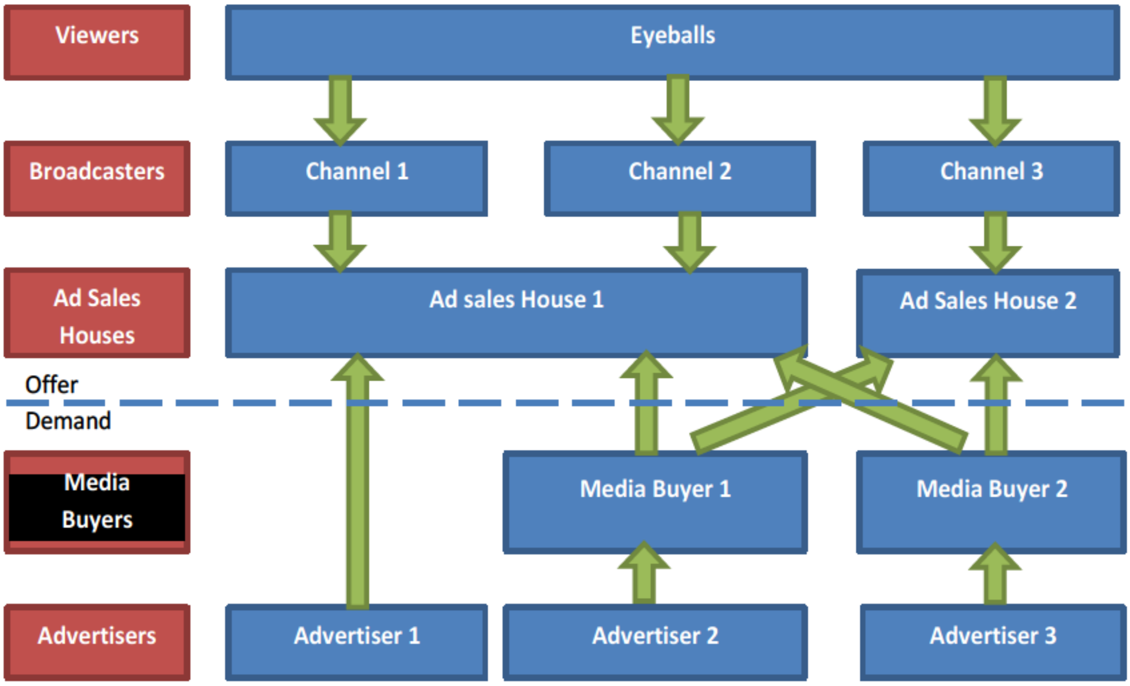
61. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the market for the retail supply of audio visual content to end users in the UK.

D. Supply of advertising in the UK

62. The proposed transaction will give rise to horizontal overlaps of the Parties' activities on the markets for (i) TV advertising in the UK, and (ii) online advertising in the UK.

63. As regards the horizontal overlap on the market for online advertising, the combined market share of the Parties is insignificant under any possible market definition (less than [0-5]% in 2013).

64. The supply chain of the TV advertising market is described below.



65. **Broadcasters**, such as the Parties, generate revenue on the market for TV advertising by selling television advertising "impacts"[27], programme sponsorship and other advertising opportunities on their television channels.

66. **Ad sales houses** sell TV advertising airtime on behalf of broadcasters. Ad sales houses allow broadcasters to pool their impacts, lower transaction costs, increase ad sales management and sales expertise and offer buyers a broader portfolio than each broadcaster could offer individually.

67. On the same market, **advertisers** are seeking to market a product or service to their target audience. Most advertisers choose to purchase advertising impacts via a media buyer, rather than directly from a TV channel's ad sales house.

68. **Media buyers** negotiate for the purchase of advertising impacts from ad sales houses that represent broadcasters. By pooling together the demand of many advertisers, media buyers are able to secure more favourable pricing terms at a lower transaction cost than would be possible were each advertiser to purchase directly. Media buyers then compete for advertisers partly on the basis of the more favourable pricing terms that they have extracted from the ad sales houses. Media buyers usually negotiate with ad sales houses on a forward annual basis and make "bulk deals" for their advertiser clients.[28] There are five major media buyers in the UK: Group M (WPP), Omnicom, Aegis, Vivaki (Publicis) and Magna.

69. As it can be noted from the above graph, on the market for the supply of TV advertising, on the supply side, ad sales houses commercialise "impacts"[29] generated

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27 An "impact" can be defined as one viewing if an advertisement by one member of the relevant audience group.

28 As explained by one respondent to the market investigation, it may be that from time to time, a media buyer would make a series of advertiser-specific deals with an ad sales house.

29 TV impacts are the input for TV advertising measured by the audiences reached for different TV channels or programmes which is a function of their attractiveness.

by TV channels to media buyers or directly (more rarely) to advertisers. Some ad sales houses sell the TV impacts of both their own and third party channels (such as Sky Media and Channel 4); other ad sales house (such as the Channel 5, Disney or Turner) only sell the TV impacts generated by their own TV channels.

70. The negotiations concerning TV "impacts" thus take place between the ad sales house and the media buyer. Ad sales houses are responsible for managing the relations with the media buyers and negotiating contracts and terms and conditions for the broadcasters.

71. Channel 5 currently monetises its advertising impacts by operating its own ad sales house that deals directly with the media buyers. Channel 5 is thus present at both levels, as a broadcaster generating TV "impacts" and as a supplier of TV advertising.

72. By contrast, Viacom is not present in the TV advertising market itself, but only as a broadcaster, which is upstream of the TV advertising market. Viacom monetises the TV advertising impacts generated by its TV channels in the UK by wholesaling those impacts to Sky Media, the advertising sales house owned by BSkyB. According to the agreement between Viacom and Sky Media, […].

73. On the market for the supply of TV advertising in the UK, the Parties would account for [10-20]% in terms of commercial impacts (Channel 5: [10-20]%; Viacom: [0-5]%) and [10-20]% in terms of revenues (Channel 5: [5-10]%; Viacom: [0-5]%) with an increment of [0-5]%.[30] The main competitors of the Parties are ITV ([40-50]% - revenues; [30-40]% - impacts), Channel 4 ([20-30]% - revenues; [20-30]% - impacts) and BSkyB ([10-20]% - revenues; [10-20]% - impacts).

74. As it can be seen from the figures above, the UK market for the supply of TV advertising is a rather concentrated market, where the first four ad sales houses account for more than 90% of the total market size. In the eventuality where, post-transaction, Channel 5's ad sales house were to close down and its advertising impacts would be commercialised by one of the other three main ad sales houses, this could lead to further concentration on the supply side of the market.

75. The Commission has thus conducted a market investigation with the view to assessing the impact of the proposed transaction on the market for TV advertising in the UK, including as regards the future of Channel 5's ad sales house.

1. View of the Notifying Party

76. The Notifying Party submits that Viacom's decision to acquire Channel 5 was made in the context of the company's plans to maintain the Channel 5 ad sales house independent. It further submits that, even considering a possible closure of Channel 5 ad sales house's activities, this would not result in any impediments to effective competition.

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30 As indicated, Viacom is not present in the TV advertising market itself but currently wholesales its TV advertising impacts to Sky Media. The Commission assessed the combined market position of the merged entity assuming the commercial impacts of Viacom would be marketed by the Channel 5 ad sales house together with those of Channel 5.

77. As regards the likelihood of the closure, the Notifying Party claims […][31] […].

78. First, the Notifying Party notes that in terms of the rationale of the transaction, […].

79. Second, […].

80. Third, […].

81. Fourth, […].

82. Fifth, […].

83. Finally, Viacom's executives have issued public statements announcing that Channel 5 ad sales house would remain independent. Since Viacom is a US public listed company, there would be significant regulatory and other legal consequences for making inaccurate or misleading statements.

84. Even assuming an unlikely closure of Channel 5 ad sales house, the Notifying Party submits that this would not have any negative effects on competition in the UK TV advertising market.

85. First, the Notifying Party explains that the negotiating power of the ad sales house predominantly derives from the differentiation in the underlying programming of a channel and its programmes' attractiveness, not from scale. Therefore, a change in management of Channel 5's advertising sales would not mean a change in the attractiveness of the channel itself.

86. Second, ad sales houses' negotiating power would be weak. Indeed, the Notifying Party explains that television advertising is an archetypal high fixed cost, low variable cost business, as there are considerable upfront investments. A failure to sell impacts by an ad sales house would therefore represent either a failure to cover fixed costs or a loss of pure profit. Therefore, ad sales houses cannot threaten to retain advertising space, nor can they limit output in order to raise prices.

87. Third, media buyers would enjoy considerable buying power. In fact, by pooling together the demand of many advertisers, media buyers are able to secure more favourable pricing terms at a lower transaction cost than each single advertiser. Moreover, the credibility of their threat to switch supplier of advertising would be a strong disciplining factor for ad sales houses.

2. Assessment

88. Respondents to the market investigation confirmed the position of Channel 5's ad sales house as the smallest of the four main ad sales houses on the TV advertising market in the UK with approximately [5-10]% market share in revenues and [10-20]% in advertising impacts.[32]

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31 […].

32 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, question 12.

89. On the supply side of the market, the majority of customers confirmed that the attractiveness of an ad sales house mainly depends on the attractiveness of the channels it offers in its portfolio and the diversity of advertising impacts it can offer.[33] While Channel 5 has national audience reach, the market investigation also showed that none of its TV programmes falls within the 100 most popular TV programmes in the UK.[34]

90. As regards market entry, some respondents reported a number of obstacles to setting up an ad sales house in the UK (such as securing a sufficiently attractive portfolio of channels and achieving sufficient scale of audiences to attract potential advertisers and media buyers). However, it was also mentioned that two new small ad sales houses have recently entered the market (Axiom Media and Ethnic Media Sales).[35]

91. On the demand side of the TV advertising market in the UK, there are five major media buyers aggregating advertising demand: Group M (WPP) (30-35%), Omnicom (10-15%), Aegis (10-15%), Vivaki (Publicis) (10-15%) and Magna (approximately 5%).[36] The market investigation generally confirmed the existence of some indication of buyer power.

92. The majority of the respondents confirmed that most media buyers multisource in order to cover the advertising needs of their clients.[37] The market investigation showed that switching (at least a share of one media buyer's business) from Channel 5 to another ad sales house is not particularly difficult for media buyers.[38]

93. All respondents, both competitors and customers, take the view that the impact of the transaction will be insignificant in a scenario where the Channel 5 ad sales house will be maintained, as there would be no change to the market structure. Some respondents even pointed out that the transaction is likely to have positive aspects, as a combined Viacom-Channel 5 would be a stronger competitor for audiences in the UK.[39]

94. With regard to the unlikely scenario where the Channel 5 ad sales house were to be closed and the advertising generated by Channel 5 were to be contracted with one of the

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33 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, question 19.

34 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, question 15.

35 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, question 25.

36 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, question 14.

37 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, questions 21 and 22.

38 There was even an instance where a media buyer has entirely switched away from Channel 5. It was however noted by respondents to the market investigation that it would be much more difficult to switch away from the ITV, Channel 4, and Sky Media ad sales houses because they represent "must-have" channels with extensive audience reach.

39 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, questions 27 and 28.

other three major ad sales houses, a limited number of respondents pointed out that the market would become increasingly concentrated.[40]

95. As regards the supply side of the market, the transaction will not have any impact on the number of alternative suppliers for media buyers' needs. Moreover, the Commission notes that the Parties' combined market share ([10-20]% in terms of revenues and [10-20]% in terms of commercial impacts) would remain limited and well below any level giving rise to competition concerns.

96. Alternative competitors will remain active on the market for TV advertising in the UK, namely ITV, Channel 4 and Sky Media (BSkyB), respectively accounting for [30-40]%, [20-30]% and [10-20]% in terms of advertising impacts.

97. The Commission notes that the demand side of the market is also relatively concentrated (with the four main media buyers accounting for 60-70% of the total market).

98. As regards more particularly a possible closure of Channel 5's ad sales house, the Commission considers that there is no clearly established link between the proposed transaction and the event of the cessation of Channel 5's ad sales house activities.

99. This finding is supported by the facts submitted by the Notifying Party. First, […][41], […].

100. Second, […].

101. Third, […].

102. In this regard, […][42] […][43] confirm Viacom's intention to maintain the Channel 5 independent ad sales house post-transaction. This decision has also been reflected by the statements made by Viacom's management to the press since then.[44]

103. Finally, as regards possible options for outsourcing the Viacom and Channel 5 ad sales function, […][45][…].[46]

3. Conclusion

104. In light of the above, the Commission concludes that the proposed transaction does not raise serious doubts as to its compatibility with the internal market on the markets for (i) the supply of TV advertising in the UK and (ii) the supply of online advertising in the UK.

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40 See replies to Commission Questionnaire to customers and competitors of 4 August 2014, question 27.

41 […].

42 […].

43 […].

44 See annex 6 (p) to the Form CO, - Statements made by Philippe Dauman, Viacom's CEO to the press, from May and June 2014.

45 […].

46 […].

VI. CONCLUSION

105. For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission
(signed)
Joaquín ALMUNIA
Vice-President