



## DETERMINATION OF MERGER NOTIFICATION M/16/064 - BBC & ITV/BRITBOX

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### Section 21 of the Competition Act 2002

#### Proposed acquisition of joint control by BBC Worldwide Americas, Inc. and ITV SVOD Holding Inc. of BBC Extra LLC (to be renamed Britbox LLC) and BB Rights LLC

Dated 18 January 2017

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#### Introduction

1. On 13 December 2016, in accordance with section 18(1) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby BBC Worldwide Americas, Inc., an indirect wholly-owned subsidiary of the British Broadcasting Corporation<sup>1</sup> (“the BBC”), and ITV SVOD Holding Inc., an indirect wholly-owned subsidiary of ITV plc (“ITV”), (collectively “the Acquirers”) would:
  - (i) acquire joint control over BBC Extra LLC (to be renamed Britbox LLC) (“Britbox”) through the acquisition by each of the BBC and ITV of [...] % of the membership interest (capital and voting rights) in BBC Extra LLC;<sup>2</sup> and
  - (ii) acquire joint control over BB Rights LLC (a related company for the purposes of licencing content) (“BB Rights”) through the acquisition by each of the BBC and ITV of [...] % of the membership interest in BB Rights.<sup>3</sup>
2. Post-transaction, Britbox will be operated as a joint venture between the Acquirers and will be providing a new video-on-demand service of primarily British content to viewers in the United States of America (“U.S.”).<sup>4</sup>
3. Given that both of the Acquirers 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.

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<sup>1</sup> Through its wholly-owned subsidiary, BBC Commercial Holdings Limited.

<sup>2</sup> AMC Networks Inc. will hold a [...] % membership interest (capital) in Britbox but will not have any control rights, negative or otherwise, over Britbox.

<sup>3</sup> BBC Extra LLC will operate as the joint venture company and will hold the intellectual property for a video-on-demand service. It will change its name to Britbox LLC after implementation of the proposed transaction. BB Rights LLC will play a supporting role in the licencing of content for Britbox.

<sup>4</sup> <http://www.britbox.com/>



## The Proposed Transaction

4. The creation of Britbox was agreed on 1 November 2016 pursuant to a binding term sheet (“BTS”) entered into between the Acquirers and side letters between the Acquirers and Britbox on the same date. Subsequently, on 12 December 2016, a membership subscription agreement (“MSA”) was entered into between Britbox, the Acquirers and AMC Networks Inc. (“AMC Networks”).
5. The proposed transaction involves the creation of a joint venture, Britbox, to perform, on a lasting basis, all the functions of an autonomous economic entity, as provided for in section 16(4) of the Act.
6. Following implementation of the proposed transaction, each of the Acquirers will own a [...] % membership interest (capital and voting rights) in Britbox and will, as such, jointly control Britbox. [BBC and ITV will each have 50:50 voting right in Britbox.] AMC Networks will hold a [...] % membership interest (capital) in Britbox but will not have any control rights, negative or otherwise, over Britbox.<sup>5</sup>

## The Undertakings Involved

### The BBC

7. The BBC, through its commercial arm BBC Commercial Holdings Limited, has controlling interests in a number of subsidiaries worldwide<sup>6</sup>, the purpose of which is to support the BBC’s public service mission and to generate revenue for the BBC group of companies. This includes investing in, commercialising and showcasing content from the BBC around the world.
8. For the financial year ending 31 March 2016, the BBC had worldwide turnover of approximately €1.34 billion<sup>7</sup>. The BBC derived turnover in the State from its stake in the UKTV joint venture<sup>8</sup>, which, in the year ending 31 December 2015, generated €[...] <sup>9</sup>, of which [...] % was attributable to the BBC. The parties state that the BBC also derived *de minimis* turnover in the State from the sale of content and channels which are broadcast in the State.

### ITV

9. ITV is an integrated producer-broadcaster, operating one of the largest families of commercial television channels in the UK (including both free to air and pay television channels). ITV’s programming is primarily funded by revenues generated from the sale of television advertising space. In addition to traditional broadcasting on its television channels, ITV also delivers content on-demand through numerous platforms, both by licensing content to other parties and directly via the ITV Hub. Through its ITV Studios

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<sup>5</sup> [...].

<sup>6</sup> The majority of the BBC’s subsidiaries are incorporated in England and Wales, while a number of subsidiaries are incorporated in the U.S., Canada, Mexico, Africa, Australia and a number of countries in the EU.

<sup>7</sup> Euro figure converted from £981.4 million using the European Central Bank (ECB) average conversion rate for 1 April 2015 – 31 March 2016.

<sup>8</sup> This is a joint venture between BBC Worldwide Limited and Scripps Networks Interactive, Inc.

<sup>9</sup> Euro figure converted from £[...] using the ECB average conversion rate for 1 January 2015 – 31 December 2015.



business, ITV produces content both for its own channels and for third parties in the UK, as well as overseas.

10. Certain of ITV's television channels (namely ITV2, ITV3 and ITV4) are retransmitted in the State by Virgin Media Limited.<sup>10</sup> ITV supplies wholesale television content to the UTV Ireland and TV3 channels<sup>11</sup> in the State.<sup>12</sup>
11. For the financial year ending 31 December 2015, ITV had worldwide turnover of approximately €4.1 billion.<sup>13</sup> Until the recent sale of UTV Ireland Limited to Liberty Global plc<sup>14</sup>, most of ITV's turnover in the State was generated from the sale of advertising space and sponsorship on the UTV Ireland channel. For the financial year ending 31 December 2015, UTV Ireland Limited generated advertising and sponsorship revenues of approximately €[...].<sup>15</sup> ITV also has an advertising sales office in Dublin which currently sells advertising space on the UTV channel made available in Northern Ireland. In 2015, revenue for this office was approximately €[...].<sup>16</sup>

### **AMC Networks**

12. AMC Networks owns and operates several popular brands in U.S. cable television, such as AMC, IFC, SundanceTV, WE tv and IFC Films, which produce and deliver distinctive and culturally relevant content and which are available across multiple platforms in the U.S. AMC Networks also operates BBC AMERICA, through a joint venture with the BBC, and operates a global division.
13. AMC Networks conducts limited business activity in the State through its global division. Only a small portion of AMC Networks' total revenue is derived from operations in the State. For example, AMC Networks' portfolio of UK television channels are available on Sky TV in the State. Certain original content of AMC Networks, including *The Walking Dead*, is currently licensed by a third party to RTÉ in the State. In addition, selected AMC Networks original content (which is owned and licensed by third parties), such as *Breaking Bad* and *Better Call Saul*, is available on Netflix in the State.

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<sup>10</sup> There is a certain degree of "spill-over" such that some of the ITV channels may be available in the State on certain devices/receivers due to the geographical proximity of the State to the UK and due to the fact that it is possible for subscribers to get access to spill-over channels by manually adjusting their satellite boxes.

<sup>11</sup> Subsequent to the sale of UTV Ireland Limited to Liberty Global plc, ITV's turnover in the State will derive primarily from the supply of television content to Liberty Global plc's television channels, UTV Ireland and TV3, and from the sale of advertising space on the UTV channel (Northern Ireland).

<sup>12</sup> Programmes include *inter alia*: *Coronation Street*; *Emmerdale*; *Ant and Dec's Saturday Night Takeaway*; *Mr Selfridge*; *I'm A Celebrity*, *Get Me Out Of Here*; *Jeremy Kyle*; *Loose Women*; and *This Morning*.

<sup>13</sup> Euro figure converted from £2,972 million using the ECB average conversion rate for 1 January 2015 – 31 December 2015.

<sup>14</sup> The acquisition by Liberty Global plc of sole control of UTV Ireland Limited from UTV Limited, an indirect wholly-owned subsidiary of ITV, was approved by the Commission on 7 September 2016. The Commission's merger determination in relation to M/16/038 *Liberty Global/UTV Ireland* is available at: <http://www.ccpc.ie/enforcement/mergers/merger-notices/m16038-liberty-global-utv-ireland>

<sup>15</sup> Euro figure converted from US\$[...] using the ECB average conversion rate for 1 January 2015 – 31 December 2015.

<sup>16</sup> Euro figure converted from £[...] using the ECB average conversion rate for 1 January 2015 – 31 December 2015. This turnover relates to advertising placed on the UTV Northern Ireland channel only, and does not relate to advertising on the UTV Ireland channel.



### **Britbox**

14. Post-transaction, Britbox will be jointly controlled by the Acquirers who will each own a [...] % membership interest (capital and voting rights) in Britbox. AMC Networks will acquire the remaining [...] % membership interest (capital only) in Britbox.<sup>17</sup>
15. Following implementation of the proposed transaction, it is envisaged that Britbox will launch a subscription video-on-demand service (“SVOD”) in the U.S. and commence operations in [...] 2017, offering primarily BBC- and ITV-produced programming, although there may also be content licensed from third parties available on the platform. It is intended that the content would be offered primarily on a SVOD basis, similar to rival video-on-demand providers in the U.S.

### **Rationale for the Proposed Transaction**

16. The parties state in the notification:

*“North American viewer demand for subscription video-on-demand services continues to grow. With the success of recent BBC and ITV TV programmes in North America., the Parties believe successful entry into the North American market is possible. In so doing, the Parties will compete head on with established players like Netflix, Amazon Prime, Apple, Comcast, Hulu, VUDU, CinemaNow, Crackle; DirecTV; Google; Indieflix; Time Warner; Verizon and others.”*

### **Third Party Submissions**

17. No submission was received.

### **Competitive Analysis**

18. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this case it is not necessary for the Commission to define precise relevant product and geographic markets given that Britbox will not be providing any video-on-demand service in the State. Nonetheless, there is an overlap in the activities of the BBC and ITV in terms of television viewership in the State. According to the AGB Nielsen TV Consumption Report 2015, the BBC and ITV collectively account for approximately 10.6% of television viewership in the State. However, there is no overlap between the BBC and ITV in relation to the supply of television advertising space in the State. Therefore, the Commission considers that the proposed transaction does not raise competition concerns in respect of the television broadcasting activities of the BBC and ITV in the State.
19. There will be no overlap in the State between the activities of the Acquirers and AMC Networks and the activities of Britbox. As described above, following implementation of the proposed transaction, it is envisaged that Britbox will primarily provide its services to customers in the U.S.<sup>18</sup>

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<sup>17</sup> AMC Networks will not have any control rights, negative or otherwise, in Britbox.

<sup>18</sup> [...].



20. In addition, as stated above, AMC Networks will hold a non-controlling minority share in Britbox and the parties state that the participation by AMC Networks in Britbox will not impact any activities of AMC Networks, including the availability of its original content, in the State.
21. Furthermore, the proposed transaction does not give rise to any vertical competition concerns in the State.
22. 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.

#### **Ancillary Restraints**

23. The BTS between the Acquirers contains a number of restrictive covenants, which the parties claim to be restrictions that are directly related and necessary to the implementation of the proposed transaction. The Commission considers whether arrangements referred to in a notification to the Commission of a merger or acquisition constitute restrictions which are directly related and necessary to the implementation of such merger or acquisition to the extent necessary depending on the particular circumstances of a given transaction. In this case, it is not necessary for the Commission to express a view as to whether the restrictive covenants in the BTS are directly related and necessary to the proposed transaction given that the restrictive covenants between the parties relate only to the provision of Britbox's services to customers in the U.S.



## Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed transaction whereby BBC Worldwide Americas, Inc., an indirect wholly-owned subsidiary of the British Broadcasting Corporation, and ITV SVOD Holding Inc., an indirect wholly-owned subsidiary of ITV plc, would: (i) acquire joint control over BBC Extra LLC (to be renamed Britbox LLC) through the acquisition by each of BBC Worldwide Americas, Inc. and ITV SVOD Holding Inc. of [...] % of the membership interest (capital and voting rights) in BBC Extra LLC; and, (ii) acquire joint control over BB Rights LLC (a related company for the purposes of licencing content) through the acquisition by each of BBC Worldwide Americas, Inc. and ITV SVOD Holding Inc. of [...] % of the interest in BB Rights LLC, 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)<sup>19</sup> of the Competition Act 2002, as amended.

For the Competition and Consumer Protection Commission

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**

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<sup>19</sup> Section 28C(1) of the Competition Act 2002, as amended, was inserted by section 74 of the Competition and Consumer Protection Act 2014.