
Channel 5: change of control review

Review under section 353 of the Communications Act 2003

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1. Overview

This document summarises Ofcom's review of, and conclusions on, the likely effects of the change of control of the Channel 5 public service licence, following the merger between CBS Corporation and Viacom Inc.

What we have considered

Under the Communications Act 2003, Ofcom is required to review the effects or likely effects of the change of control on certain matters. These matters are:

- the time allocated on the service to, and the peak viewing time broadcast of:
 - a. original productions
 - b. news programmes
 - c. current affairs programmes
- the extent, value and range of programmes produced outside the M25; and
- the range of different production centres outside the M25 that are used.

What we have decided

Ofcom has concluded that the change of control would not have a prejudicial effect on Channel 5's delivery of these matters. So we are not making any variations to the Channel 5 licence.

2. Ofcom's role, assessment and conclusions

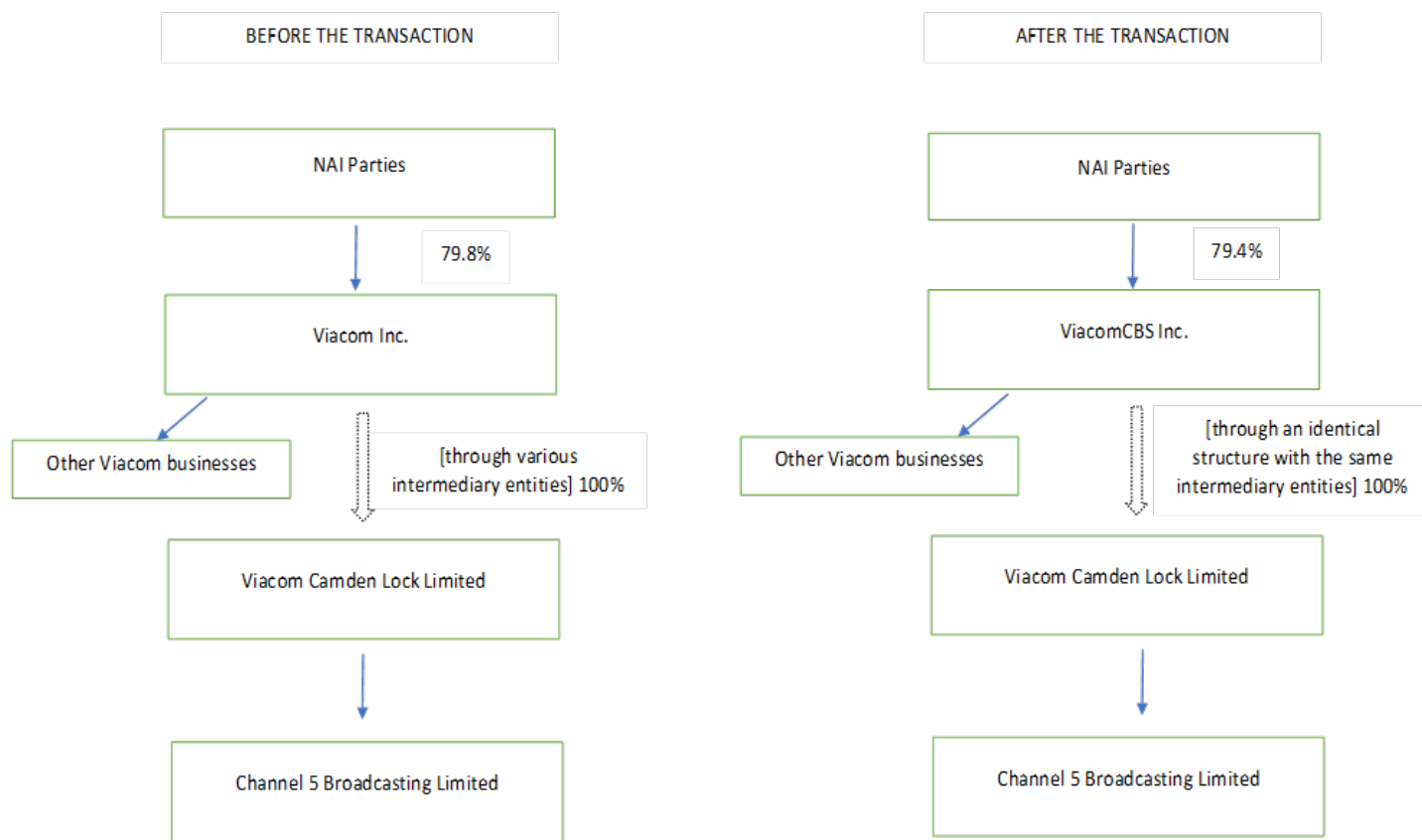
Ofcom's duty to review the effects of a change of control

- 2.1 Ofcom was notified on 10 September 2019 of the [merger between CBS Corporation and Viacom Inc. The Channel 5 public service licence](#) ("the Channel 5 licence") is currently held by Channel 5 Broadcasting Limited ("the Channel 5 licensee"), which is controlled by Viacom Inc.
- 2.2 Section 353 of the Communications Act 2003 ("the Act") requires Ofcom to review "the effects or likely effects" of any relevant change of control of the Channel 5 licensee on certain matters.
- 2.3 The matters which the review must cover are listed in subsections (4) and (5) of Section 353. In summary, the matters specified to in subsection (4) and (5) are:
- the time allocated (in peak-time and total) to original productions;
 - the time allocated (in peak-time and total) to news programmes;
 - the time allocated (in peak-time and total) to current affairs programmes;
 - the volume, value and range of programme production outside the M25.
- (Peak time is defined for all of the public service broadcasters as 6pm to 10.30pm)
- 2.4 If Ofcom considers the change of control would be prejudicial to any of the above matters, section 354 of the Act requires Ofcom to vary the Channel 5 licence with a view to ensuring the change of control is not prejudicial.
- 2.5 Before varying the licence, Ofcom must give the Channel 5 licensee a reasonable opportunity of making representations about the variation.
- 2.6 Ofcom carried out a review of this change of control in accordance with the Act. This document constitutes the report of this review, which Ofcom is required to publish under Section 353(6) of the Act. The report must set out Ofcom's conclusions and specify any steps which it proposes to take under Section 354 of the Act.

The transaction resulting in a change of control of Channel 5

The transaction

- 2.7 A corporate structure diagram is included below which shows the corporate holding structure above the Channel 5 licensee and the level of control before and after the transaction:



2.8 As the diagram shows, Viacom Inc will be replaced by ViacomCBS Inc. within the corporate holding structure above the Channel 5 licence holder. This will take place by means of a provision of Delaware company law, under which Viacom Inc. is merging with CBS Corporation. Viacom Inc. shares will be cancelled and CBS Corporation will be the “Surviving Corporation” but all Viacom Inc.’s assets and liabilities will survive unchanged. The Surviving Corporation will be renamed ViacomCBS Inc.

2.9 The ultimate owners, referred to as “NAI Parties” in the diagram, will remain the same after the transaction. “NAI Parties” refers to National Amusements, Inc (which is controlled by the Redstone family) and one of its subsidiaries. They currently control just under 80% of the voting rights of each of Viacom Inc (79.8%) and CBS Corporation (78.9%). After the merger, they will control just under 80% of the voting rights of the surviving corporation ViacomCBS Inc.

2.10 Viacom Inc. has also sent us a copy of [the Merger Agreement](#), which brings into effect the transaction.

Our analysis of whether the merger constitutes a change of control

- 2.11 Ofcom's view, based on the information provided in this letter, was that the merger constituted a "relevant change of control" for the purposes of section 353 of the Communications Act 2003.
- 2.12 A relevant change of control is defined as:
- "a change in the persons having control over—
- (a) a body holding a licence to provide Channel 5; or
 - (b) any body which—
 - (i) is connected with a body holding such a licence; and
 - (ii) is involved, to a substantial extent, in the provision of the programmes included in that channel, or is likely to become so involved."
- 2.13 Subsection (8) provides that "control" has the same meaning as it does in Part 1 of Schedule 2 to the Broadcasting Act 1990 Act. In that Part, "control" includes situations where it is reasonable, having regard to all the circumstances, to expect that a person would (if they chose to) be able in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that affairs of the body are conducted in accordance with their wishes.
- 2.14 Pursuant to this provision, we consider each of the individual companies in the corporate holding structure above the licensee to be persons having control over the body holding the licence to provide Channel 5.
- 2.15 Each of Viacom Inc. and CBS Corporation is currently majority controlled by the same ultimate owners, such that the transaction does not change who ultimately controls the Channel 5 licence. However, the legal entity CBS Corporation does not currently control the Channel 5 licensee. Once the transaction is complete, CBS Corporation will, for the first time, be a body corporate in the holding chain for the Channel 5 licensee and will be able to achieve the result that its affairs will be conducted in accordance with its wishes. Therefore, Ofcom considers that the transaction represents a relevant change of control.

Ofcom's analysis of the potential effect of the change of control

- 2.16 We think the ownership and executive leadership of the new entity are relevant factors to the future of Channel 5, as these may affect the investment strategy and future commissioning decisions. Viacom has confirmed in its notification that the ultimate owners of the Channel 5 licensee will remain the same following the merger. The boards of Channel 5 Broadcasting Limited and Viacom Camden Lock Limited will also remain the same. It appears to us that the transaction has a strategic and commercial rationale which is not to do with Channel 5 and therefore would be unlikely to affect its strategic direction directly.

- 2.17 David Lynn, President and CEO of Viacom International Media Networks also wrote to Ofcom on 12 November 2019, to explain the extent to which the proposed merger is anticipated to impact on the Channel 5 licence. Viacom International Media Networks is the international division of Viacom Inc., which has responsibility for Viacom Inc.'s international brands including Channel 5. He noted that Robert M. Bakish, Viacom's current President and CEO, is to be the President and CEO of the combined entity. He was Chief Executive of Viacom's international media networks operations at the time Channel 5 was acquired by Viacom.
- 2.18 We also note that in his letter, David Lynn stated "it has recently been announced that following the Transaction I will oversee the combined company's international media networks, including Channel 5. I am therefore able to assure you that my UK team will maintain the same degree of control over programming and investment strategy for Channel 5 as prior to the Transaction, and the same level of commitment to investing in a wide range of UK-originated productions."
- 2.19 Given the continuity in ownership and leadership, we consider that the change of control would be unlikely to have a prejudicial effect the matters listed in Section 353(4) and (5) of the Communications Act 2003.

Conclusion

- 2.20 Having regard to all the above, Ofcom has concluded that the change of control would not be prejudicial to the matters listed in Section 353(4) and (5) of the Act. As such, Ofcom does not propose to take any steps under section 354 of the Act.