



Case M1618G

Formation/Extension of BritBox Joint Ventures

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Decision

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Guernsey Competition and Regulatory Authority

13 April 2022

Guernsey Competition and Regulatory Authority  
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## Summary

1. Three transactions, namely the establishment of the following full function joint ventures between BBC and ITV subsidiaries: BritBox LLC in USA/Canada (2017), BritBox Australia Partnership (2020) and BritBox International Ltd (2021) have been notified to the Guernsey Competition and Regulatory Authority (**GCRA**) pursuant to Section 16(1) of the Competition (Guernsey) Ordinance 2012 (the **2012 Ordinance**).
2. The GCRA has determined that these transactions will not lead to a substantial lessening of competition in any relevant market and so approves them.

## The Notified Transaction

3. On 23 March 2022, the GCRA received a combined application by BBC Studios Distribution Ltd (**BBCSD**) and Granada Media Ltd on behalf of themselves and the various other BBC and ITV subsidiaries participating in the formation of the three joint ventures (the **Notified Transaction**), being: BBC Studios Australia BB Pty Ltd, BBC Studios Americas Inc, ITV SVoD Australia Pty Ltd and ITV SVoD Holding Inc (the **Notifying Parties**).
4. The Notified Transaction involves the establishment of three historic full function joint ventures, being: BritBox LLC joint venture for the USA and Canada in 2017, BritBox Australia Partnership joint venture for Australia in 2020 and BritBox International Ltd joint venture in 2021, which launched its operations in South Africa at that time (the **BritBox JVs**).
5. The GCRA registered the application on its website with a deadline for comments of 5pm on Wednesday, 6 April 2022. No submissions were received.

## The Parties

6. The BritBox JVs and their parent companies are:
  - a. BritBox LLC, a domestic limited liability company, established in New York State, United States of America, with Department of State ID: 4861966, the parents of which are BBC Studios Americas Inc and ITV SVoD Holding Inc.
  - b. BritBox Australia Partnership, an Australian general partnership, with Australian business number: 49 274 475 031, the parents of which are BBC Studios Australia BB Pty Ltd and ITV SVoD Australia Pty Ltd.
  - c. BritBox International Ltd (**BBI**), a private limited company, incorporated in the United Kingdom, with company number: 13131628, the parents of which are BBCSD and Granada Media Ltd.

7. The ultimate controllers of the BritBox JVs, via the subsidiaries participating in the relevant joint ventures, are:
  - a. The BBC, which is an entity established by Royal Charter. BBC is a leading public service broadcaster providing a range of TV and radio channels and on-demand services for licence-payers. It is a founding member of a number of not-for-profit JVs underpinning UK broadcast infrastructure.<sup>1</sup>
  - b. BBCSD, a commercial subsidiary of the BBC, which operates on an arm's length basis from the public services provided by the BBC under the terms of trading, separation and non-discrimination requirements imposed by OFCOM in regard to such BBC public services.<sup>2</sup> BBCSD invests in content and intellectual property for global distribution through content sales, channels and ancillaries. It also owns a number of free to view and pay TV channels available on a variety of platforms.
  - c. ITV plc, which is an integrated content producer and broadcaster. It broadcasts various public service and commercial channels and distributes its content on multiple platforms, including by way of subscription video on demand. It, like the BBC, is a member of certain not-for-profit JVs underpinning UK broadcast infrastructure.<sup>3</sup>

### Guernsey: Requirement for GCRA Approval

8. Pursuant to s.61(3)(b) of the 2012 Ordinance, a merger or acquisition occurs for the purposes of this Ordinance: "*on the creation of a joint venture*".
9. As explained above, the Notified Transaction creates three full function joint ventures
10. The Notified Transactions are therefore mergers, as defined by the 2012 Ordinance.
11. Under s.13(1) of the 2012 Ordinance, certain mergers must be notified to, and approved by the GCRA before they can be put into effect. Regulation 1 of the Regulations provides that mergers must be notified to the GCRA for clearance if:

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<sup>1</sup> These include: Digital UK Ltd providing technical services that facilitate free to air broadcast of Freeview over the digital terrestrial television and the operation of Freeview play services (a video on demand service); DTV Services Ltd controlling the marketing of Freeview; Youview, a hybrid digital terrestrial television and IP service retailed by BT and Talktalk.

<sup>2</sup> [https://www.ofcom.org.uk/data/assets/pdf\\_file/0019/222085/bbc-trading-and-separation-requirements-consolidated-version.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0019/222085/bbc-trading-and-separation-requirements-consolidated-version.pdf)

<sup>3</sup> Digital UK Ltd, DTV Services Ltd and Youview.

- a. The combined Channel Islands turnover of the undertakings involved in the merger exceeds £5 million, and
  - b. Two or more of the undertakings involved in the merger have Guernsey turnover exceeding £2 million.
12. According to information provided by the Notifying Parties, the combined and individual applicable turnover of the undertakings involved in the Notified Transaction exceeds these thresholds. Because GCRA approval of the Notified Transaction was not obtained prior to the implementation of the joint ventures, retrospective approval is now required.

### **Market Definition**

13. Under s.13 of the 2012 Ordinance, the GCRA must determine if the merger would substantially lessen competition within any market in Guernsey for goods or services.
14. As an initial step, the GCRA will identify the markets which are likely to be affected by the merger since market definition provides a framework within which the competitive effects of a merger can be assessed.
15. When defining a market, the GCRA may take note of its own previous decision-making practice and/or market definitions applied by other competition authorities. However, these previous decisions are not precedents and are not binding, either on the merging parties or on the GCRA. Competition conditions may change over time, changing the market definition. Market definition will always depend on the prevailing facts<sup>4</sup>.

### **Views of the Parties**

16. The BritBox JVs provide subscription video on demand ("SVoD") service focused on a range of British content under licence from BBCSD, ITV and other content providers.
17. The Notifying Parties have identified three market levels as follows:
- a. TV content and licensing;
  - b. Wholesale supply of TV Channels;
  - c. Retail supply of TV Services to viewers/consumers

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<sup>4</sup> This approach is consistent with that taken under EU law – see, for example, Joined Cases T-125/97 and T-127/97 [2000] ECR II-01733, paragraphs 81-82

but ultimately leave the precise product market definition open.

18. The Notifying Parties further indicate that the geographic market for retail TV services has generally been held to be national in scope or to extend across a linguistically homogenous European area (such as the UK and Ireland). They further point out that none of the BritBox JVs that constitute the Notified Transaction provide services in Guernsey but rather operate in the USA, Canada, Australia and South Africa.

### **GCRA Consideration**

19. The precise product and geographic market definition can be left open in this case, since the Notified Transaction will not give rise to a substantial lessening of competition on any plausible basis.

### **Effect on Competition**

20. For the following reasons, the Authority considers that the mergers are unlikely to lead to a substantial lessening of competition:

- a. The activities of the BritBox JVs are confined to the USA, Canada, Australia and South Africa. None provides any services in Guernsey. As such, their creation is unlikely to lessen competition substantially in Guernsey on any plausible basis.
- b. Market data in respect of UK BritBox subscription revenue and viewership suggests that the segment in which UK BritBox operates is competitive. Accordingly, even if there were unforeseen indirect/spillover effects into any Guernsey market from the extra-territorial BritBox JV mergers, it is unlikely that these would give rise to a substantial lessening of competition on any relevant market in Guernsey.

### **Decision**

21. Based on the preceding analysis, the GCRA concludes that the mergers will not substantially lessen competition within any market in Guernsey for goods or services.

22. The GCRA is also satisfied that the mergers would not be to the prejudice of:

- (a) consumers or any class or description thereof;
- (b) the economic development and well-being of the Bailiwick; or
- (c) the public interest.

53. The mergers are therefore approved under s.13 of the 2012 Ordinance.

**13 April 2022**

**By Order of the Board of the GCRA**