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**Ref.: Verbraucherzentrale Bundesverband e.V. comments on  
Paramount's proposed commitments. Case AT.40023 - Cross-border  
access to pay-TV.**

**Non-Confidential**

Dear Commissioner Vestager,

I am writing on behalf of the Federation of German Consumer Organisations (*Verbraucherzentrale Bundesverband e.V. - VZBV*). VZBV is the umbrella organisation of 41 German consumer organisations, representing more than eighty million consumers.

Hereby we would like to provide our comments on the commitments offered by Paramount in the framework of the ongoing antitrust case on the cross-border provision of pay-tv services (Case AT.40023).

VZVB is following this case very closely. Our contribution is based on the materials and information that have been made publicly available by the European Commission in the course of the current proceedings<sup>1</sup>.

**1. Declaration of interest**

Pursuant article 27(4) of Regulation 1/2003 VZBV provides comments on the commitments proposed by Paramount. VZBV's legitimate interest in this case is given by the fact that our main task is to defend the interest of German consumers.

The current antitrust proceeding concerns the possibility for consumers outside the United Kingdom and Ireland to access pay-TV services available

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<sup>1</sup> [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=1\\_40023](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=1_40023)

in those countries in the form of the so-called passive sales. Thus, German consumers are directly affected by the clauses object of investigation as they prevent them to access such services.

Additionally, German consumers would also be affected by the commitments offered by Paramount since they seek to remove any contractual restriction to respond unsolicited request coming from consumers from outside the territory of exclusivity (United Kingdom and Ireland), which is extended to Germany.

VZVB is also a member of BEUC, the European Consumer Organisation. BEUC is participating in the proceedings as an 'interested third party'. In this regard, we would like to express our full support of BEUC's positions.

## **2. General remarks on Case AT.40023 "Cross border provision of Pay-TV services"**

It is our view that the licencing agreements under investigation restrict competition and lead to a fragmentation of the Single Market. This is detrimental to consumers, who are prevented from subscribing to pay-tv services outside of their country of residence and therefore prevented from enjoying all the possibilities that the Digital Single Market can offer.

The way these agreements are designed generates a situation of 'absolute territorial exclusivity' which, coupled with geo-filtering practices, result in consumers being 'de facto' locked in to their domestic pay-tv providers. Consumer choice is restricted by the imposed geographical limitations to available pay-tv offers, and the lack of cross-border competition discourages the development of affordable quality legal offers across Member States. This situation also creates a greater risk that consumers turn to unauthorised sources to access audiovisual content. Geo-blocking of online content makes no sense to consumers in the Digital world.

In addition, the possibility of getting a subscription to a pay-TV service from another Member State will enable consumers to watch foreign European content (e.g. TV programmes, films, sports events, etc.) which might not be available in their home markets, therefore increasing access to the cultural diversity in Europe.

Agreements like the ones existing between the Hollywood film studios and Sky in the UK are widely used in the audiovisual sector all across the EU, including our country, Germany, which we understand has also been part of the investigations undertaken in the framework of this case.

We would like to encourage the Commission to take all the actions necessary to ensure that the outcome of this case benefits consumers in all of the EU,

allowing them to have access to the pay-tv provider of their choice, be it in their home country or abroad.

### **3. VZBV comments on Paramount's commitments**

The commitments proposed by Paramount seem to successfully address the core-problem identified by the Commission's investigation. We strongly welcome that Paramount goes as far as offering to not introduce any contractual obligations restricting cross-border passive sales across the whole European Economic Area (EEA), not only the UK and Ireland. Paramount also commits not to enforce the obligation to prevent passive sales in existing agreement licensing its films output for pay-tv.

An important element of the proposed commitments is that they cover both satellite broadcast and transmission by means of mobile wireless technologies (online).

From VZBV viewpoint these are positive developments and we believe the European Commission should accept them for the following reasons:

- a. The proposed commitments address the main grounds of the investigation as described in the European Commission's press release of 23 July 2015.
- b. The proposed commitments demonstrate that it is not necessary for a right holder to implement geo-blocking clauses in order to license its content on a territorial basis in the EEA.
- c. These commitments would benefit German consumers since they would not be prevented to access content licensed by Paramount to providers in other member states by means of passive sales.
- d. If Paramount is able to propose such broad commitments, so must be the other undertakings. Therefore, if the European Commission's accepts these commitments the other studios and Sky should follow suit and:
  - Eliminate contractual obligations preventing pay-TV providers from responding unsolicited requests from consumers located outside the territory of exclusivity but within the EEA.
  - Commit not to enforce existing contractual clauses against Sky or other pay-tv provider across the EEA for responding to unsolicited requests from consumers located outside the territory of exclusivity but within the EEA.

#### **4. Conclusion**

VZBV recommends the European Commission to adopt a decision under Article 9(1) of Regulation (EC) No 1/2003 declaring binding the commitments proposed by Paramount and to continue the case against the other parties under investigation.

With kind regards



Klaus Müller  
Executive Director