Channel 5: Ofcom’s change of control review

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The Communications Act makes provision for Ofcom to carry out reviews when there is a change in ownership of any Channel 3 or Channel 5 licensee. There have been three previous reviews in relation to a change in control of Channel 5.

Section 353 requires Channel 5 to give Ofcom notification of a “relevant change of control”, backed up by an obligation to provide Ofcom with such information as it requires to carry out a review of the change. The “relevant change of control” is not limited to the direct holding of shares in the licence holder but also includes any body connected with the licensee.

Ofcom was notified of the merger of CBS Corporation and Viacom Inc, both US corporations owned by the same entities. Prior to the merger, Viacom had held shares in a company which, through various intermediaries, eventually held shares in Channel 5 Broadcasting Limited, the licensee. After the merger, CBS would survive (renamed ViacomCBS Inc) but all Viacom’s assets and liabilities would be transferred to CBS. While ultimate ownership would not change, CBS would become a body corporate in the chain of companies holding Channel 5, and this is a relevant change of control for the purposes of section 353 of the Communications Act.

Ofcom is obliged to carry out a review of the effects or likely effects of such a change. Subsections 353(4) and (5) list matters to be taken into account. These relate to programming matter, specifically the amount of time allocated to original programmes, news and current affairs, and the range of programmes made at different centres of programme production in the United Kingdom outside the M25. Ofcom took the view that ownership and executive leadership were relevant, given their potential impact on investment strategy and future commissioning decisions, and thus ultimately on programming. Should Ofcom be of the view that the relevant change of control would be prejudicial to any of the matters specified in subsections 353 (4) and (5), it would vary the licence to make sure the change of control is not prejudicial.

In its 2005 review, when CLT acquired the Channel 5 licensee, Ofcom stated that its approach to the review was “first to establish what changes have taken place or are planned in the areas covered by subsections (4) and (5), and whether the level of provision has remained and is likely to remain at or above the level

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preceding the change of control". It broke the programming down into the specific categories identified in section 353, assessing them individually. It took a similar approach in 2010 and 2014. In the current review, the factors that Ofcom took into account in its review were:

Whether the ultimate owners would remain unchanged; Whether the immediate owner of the Channel 5 licensee would also remain unchanged; Whether the key executives of Viacom would remain in place in the combined entity and would have committed to continued control over programming and investment strategy; Whether the new President of ViacomCBS was the person who was in charge of Viacom's international networks at the time Channel 5 was originally acquired by Viacom.
Ofcom took the view 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."

Ofcom concluded that the change of control would not be prejudicial to programming and therefore did not propose to amend Channel 5's licence.

Channel 5: change of control review Review under section 353 of the Communications Act 2003

https://www.ofcom.org.uk/__data/assets/pdf_file/0023/181391/change-of-control-review-channel-5.pdf

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