

Completed acquisition by Northern & Shell Network Limited of CLT-UFA Holdings

ME/4682/10

The OFT's decision on reference under section 22(1) given on 12 November 2010. Full text of decision published 19 November 2010.

Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

PARTIES

1. **Northern & Shell Network Limited ('N&S Network')** is the principal holding company of the Northern & Shell group of companies (the 'N&S Group'). The N&S Group is principally active in: (a) newspaper publishing and printing (for example, it publishes the Daily Express, Sunday Express, Daily Star and Daily Star Sunday newspapers), (b) magazine publishing (such as OK!, New! and Star), (c) television broadcasting through Portland TV and exploitation and further development of intellectual property.
2. **CLT-UFA Holdings ('CLT Holdings')** and its subsidiaries operate the Five business, which is principally engaged in television broadcasting through its channels Five, Fiver and Five USA. Five is a Public Service Broadcasting ('PSB') channel, whereas Fiver, Five USA, Five HD and their + 1 variants (hereafter referred to as 'Five Digital') are digital channels. All the channels are licensed by Ofcom in the UK and their activities target the UK market. In the financial year ended 31 December 2009 the worldwide turnover of the Five business amounted to approximately £269 million.

TRANSACTION

3. Northern & Shell Broadcasting Limited, an associated company of N&S Network, completed the acquisition of the whole issued share capital of CLT Holdings pursuant to a Share Purchase Agreement dated 23 July 2010 (the 'Transaction').
4. The OFT received a satisfactory submission in relation to the Transaction on 29 September 2010. The statutory deadline for the OFT to reach a decision is 23 November 2010.

JURISDICTION

5. As a result of this transaction N&S Network and CLT Holdings have ceased to be distinct. The UK turnover of CLT Holdings exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied.

MARKET DEFINITION

Introduction

6. The Transaction gives rise to a horizontal overlap between N&S Network and CLT Holdings in three broad areas, namely, television broadcasting, sale of advertising and the provision of news.¹

Product scope

Television broadcasting

7. In previous decisions, the OFT and the Competition Commission have analysed television broadcasting markets by distinguishing between free-to-

¹ Television is a two-sided market that intermediates between distinct and unrelated groups of customers (viewers and advertisers) with externalities between them. These indirect network effects complicate market definition and the competitive assessment of mergers in two-sided markets (see Merger Assessment Guidelines, paragraphs 5.2.20 and 5.4.12). However, given the low market shares on either side of the market taken in isolation, the OFT has not needed to factor these indirect network effects into its analysis.

air ('FTA') and basic pay-TV channels² while acknowledging, however, the constraint exerted by FTA channels on basic pay-TV channels.

8. There is, in fact, limited overlap between the broadcasting activities of CLT Holdings and N&S Network. Five and Five Digital are FTA channels whereas channels available through Portland TV are only available on Pay TV. In addition, the Portland TV channels are very different to the Five channels, in particular in relation to content. While the Five channels are aimed at a general market, the Portland TV channels are primarily adult entertainment channels. In addition, the Five channels are available on all major platforms, whereas the Portland TV channels are only available on Pay TV platforms (either on a subscription basis or on a pay per view basis).
9. In any event, even on a conservative approach of considering the Portland TV channels to be in the same market as the Five channels, the Transaction does not give rise to any competition concerns. The OFT does not, therefore need to conclude on the precise scope of market definition in television broadcasting.

Sale of television advertising

10. The OFT's market investigation suggested that the television advertising is the narrowest plausible candidate product market. This is consistent with previous OFT and Competition Commission decisions³ and with Ofcom's *Airtime Sales Rules Review*.⁴ However, given that the Transaction does not give rise to any competition concerns on this narrowest plausible candidate market, the OFT has not needed to determine whether the relevant market in this case may be wider than only television advertising.

² Competition Commission: *BSkyB/ITV*, Report sent to Secretary of State (BERR) 14 December 2007 and OFT Decision of 14 September 2010, ME/4568/10, *Completed Acquisition by British Sky Broadcasting Group Plc of TV channel business of Virgin Media Television*

³ *BSkyB/ITV* Report sent to Secretary of State (BERR) 14 December 2007, *Carlton Communications Plc and Granada plc: a report on the proposed merger*, TSO, Cm 5952, October 2003 and, recently the Competition Commission in *ITV Contract Rights Renewal*, Final Report published 12.05.10

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/asr/statement/statement.pdf>

Provision of news

11. The parties submitted that the market for provision of television news is distinct to the provision of printed news. The OFT notes that this is consistent with the Competition Commission's assessment in *Sky/ITV*. On these narrow candidate product markets, there is no overlap between the parties. On a cautious basis, however, the OFT has also considered the provision of cross-media news, where the parties overlap. Given that the Transaction does not give rise to any competition concerns on this basis either, the OFT does not need to conclude on the precise scope of the product market in this instance.

Geographic scope

12. In past cases, the geographic scope of television broadcasting and related television advertising markets as well as news provision was considered to be national.⁵ The OFT's market investigation has supported this view.

HORIZONTAL ISSUES

Television broadcasting

13. As discussed above, the activities of Five and N&S Network in television broadcasting are of a different nature. Notwithstanding this, and adopting a conservative approach in this case, the combined market share of Five and N&S Network in television broadcasting, when measured by number of viewers, is at most 10 per cent (with an increment of at most four per cent)⁶ which does not raise prima facie competition concerns.

Television advertising

14. As discussed above, there is very limited overlap between the parties in respect of the sale of television advertising. The parties submit that Portland TV carries very limited amounts of spot advertising. In addition, the OFT's market investigation has confirmed the parties' submission that there is no direct competition between them in the supply of television advertising.

⁵ See footnote 5, above *ITV Contract Rights Renewal, Sky/ITV*, see footnote 3 above

⁶ Portland TV channels are not BARB rated so it is not possible to have precise shares of viewing for them.

15. Given that Five's share of advertising sales revenues is approximately 10 per cent, and the increment to that from Portland TV sales is minimal, the OFT does not consider that the Transaction would give rise to a substantial lessening of competition.

Provision of news

16. As discussed above, the parties do not overlap in the supply of news through the same media, as Five provides television news and N&S Network provides news through its newspaper publications. Even if, on a conservative basis, the OFT were to look at an 'all media' news provision market, the Transaction would not give rise to competition concerns given N&S Network's modest share in newspaper news provision (15 per cent) and Five's small (six per cent) share in broadcasting (to the extent this can be used as a proxy for Five's share of news provision). This means that as part of an 'all media' news provision market, the parties' combined share would be less than 20 per cent (since the 'all media' market would include other media such as radio and the internet) so that their combined position would not give rise to any competition concerns.

THIRD PARTY VIEWS

17. The OFT's market investigation confirmed the parties' submission that there was limited competition between them.
18. One third party raised a concern that the merged entity could engage in conditional selling of advertising post merger.⁷ However, given that the position of each of the parties (as discussed above) is not particularly significant in any segment in which either operates it is difficult to see that the parties would have the ability to engage in conditional selling post-merger.

ASSESSMENT

19. The parties overlap in television broadcasting, supply of television advertising and news provision.

⁷ That is, that the merged entity would only sell one product in its portfolio if the customer would be willing to buy other products (that are potentially less attractive to the customer).

20. The parties' overlap in the sale of television broadcasting is minimal. In addition, the parties are active in different segments of television broadcasting, with Five being predominantly an FTA channel with mixed programming and Portland TV channels being Pay TV channels mainly broadcasting adult entertainment content. The combined market share post-merger is such that the Transaction raises no competition concerns.
21. Likewise, the parties' overlap in television advertising is minimal and their combined market share is very low so that the Transaction does not give rise to competition concerns.
22. In respect of the provision of news, the parties again operate in distinct market segments as Five broadcasts television news whereas N&S Network is active in newspaper news provision. Even on a conservative basis of examining an 'all-media' news provision market, the parties' combined market share is sufficiently low so not to give rise to competition concerns.
23. Consequently, the OFT does not believe that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

24. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.