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Anticipated acquisition by Magicalia Publishing Limited of Good Woodworking magazine from Future Publishing Limited

The OFT's decision on reference under section 33 given on 16 March 2007. Full text of decision published 4 April 2007.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced with a range at the request of the parties for reasons of commercial confidentiality.**

**PARTIES**

1. **Magicalia Publishing Limited (Magicalia)** is a UK special interest consumer magazine publisher (formerly called Encanta Media Limited<sup>1</sup>). Among its titles, it publishes two monthly woodworking magazines, *Practical Woodworking* and *The Woodworker*. It also operates events for which exhibitors pay to take space and attendees pay for admission.
2. **Future Publishing Limited (Future Publishing)** is the UK operating subsidiary of Future plc, an international publishing group primarily active in special interest consumer magazines with over 100 monthly titles produced worldwide. It publishes one monthly woodworking magazine, *Good Woodworking* which had a UK turnover of £575,000 for the year ended September 2006.

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<sup>1</sup> Encanta Media Limited was set up in January 2006 to acquire nine special interest consumer magazines from Highbury House plc after the company went into receivership. In April 2005, the OFT referred the proposed bid by Future plc for Highbury House plc to the Competition Commission in relation to computer games magazines. That transaction also involved the acquisition of the woodworking magazine titles which are the subject of the current investigation. No third parties raised any concerns about the woodworking magazine sector during that investigation.

## TRANSACTION

3. Magicalia and Future Publishing signed an acquisition agreement on 19 December 2006 in relation to the purchase of *Good Woodworking* title, goodwill and associated business assets (the Good Woodworking business). The consideration payable is £[ ] and the assumption by Magicalia of responsibility for meeting outstanding subscription obligations to a maximum value of £[ ]. The OFT believes that the combination of assets and goodwill passing comprises an 'enterprise' for the purposes of section 23(1) of the Enterprise Act 2002 (the Act).
4. The parties notified the transaction by merger notice on 19 January 2007. The merger notice was subsequently withdrawn and the resulting administrative deadline is 23 March 2007.

## JURISDICTION

5. As a result of this transaction Magicalia and Good Woodworking business will cease to be distinct. The parties overlap in the supply of woodworking consumer magazines in the UK, for which their combined share of supply based on copy sales exceeds 25 per cent. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

## FRAME OF REFERENCE

### Product market

6. Woodworking magazines, like other special interest consumer magazines, have two groups of customers: individual readers who can purchase titles either from a retailer or by direct subscription with a publisher; and, advertisers (for example, tool manufacturers, wholesalers and retailers) which purchase magazine advertising space to promote their goods and/or services. As recognised by the OFT in a previous special interest consumer magazine case,<sup>2</sup> the willingness of magazine advertisers to pay for advertising space normally depends on the number and type of magazine readers, while

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<sup>2</sup> Anticipated acquisition by IPC Media Ltd of Horse Deals Ltd (August 2006), paragraph 6.

readers' willingness to read a particular magazine may in certain cases depend on the amount and type of advertising and/or editorial content within that magazine.

7. The parties submit that the relevant economic market is no narrower than that of the publication of consumer woodworking magazines in the UK, which they assert encompasses 12 titles substitutable in terms of advertising and readership.<sup>3</sup> However, the parties also argue that readers have a number of alternative sources from which they can access woodworking content. These include other consumer magazines which include some woodworking content, customer magazines, bookazines and specialist woodworking books, specialist woodworking DVDs and videos, websites which specialise in woodworking content and woodworking shows. In addition, the parties submit that advertisers which use woodworking magazines have a number of other media they can use, including other consumer magazines, regional newspapers, the internet and direct mail.
8. While the OFT acknowledges that other types of media (including internet websites<sup>4</sup>) contain varying degrees of woodworking material and evidence suggests that some readers and advertisers make use of them, the majority of third party comments provided to the OFT indicate limited demand side substitution between these other media types and woodworking magazines. For example, differences in audience profiles and costs suggest that these alternatives are not regarded as particularly close substitutes. The OFT has therefore taken a cautious view and considered woodworking magazines alone for the purpose of assessing this transaction.
9. There are a number of woodworking magazines on sale in the UK as highlighted by the parties. Some of these titles cover a range of woodworking activities and product advertising, while others are focused on specialist woodworking areas (such as cabinet and furniture making). The OFT has received mixed and inconclusive

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<sup>3</sup> *Good Woodworking, Router, Woodcarving, Woodturning, Furniture and Cabinet Making, New Woodworking, Traditional Woodworking, Practical Woodworking, The Woodworker, Popular Woodworking, Fine Woodworking and American Woodworking*. The latter three titles are published in the US, while the others are published in the UK.

<sup>4</sup> For example, [www.woodworkbydesign.co.uk](http://www.woodworkbydesign.co.uk) and [www.woodwork.co.uk](http://www.woodwork.co.uk).

evidence during its investigation from which to infer any precise delineation of substitutability between these magazines for the purpose of product market definition. However, as in previous special interest consumer magazine cases,<sup>5</sup> the OFT considers that selecting specific frames of reference is not a useful framework within which to analyse competition in this sector and this issue is therefore left open. Rather, the OFT considers it is more appropriate to focus on evidence regarding the closeness of the competitive interaction between the parties' titles and the strength of other constraints on them both for readers and for advertisers. In any event, it is not necessary to conclude on the exact product scope as no competition issues arise whichever definition is used.

### **Geographic market**

10. The parties' woodworking titles are sold throughout the UK. In the absence of any evidence to suggest a different geographic frame of reference, the OFT has assessed the effects of the transaction on this basis.

### **COUNTERFACTUAL**

11. In order to assess whether or not a post-merger substantial lessening of competition is, or may be likely, to occur, it is necessary to consider what the competitive situation would be absent the merger (referred to as the counterfactual). The OFT's substantive guidance suggests that the best guide to the appropriate counterfactual will generally be the prevailing conditions of competition pre-merger.<sup>6</sup>
12. Future Publishing submits that the appropriate counterfactual on which to base the competitive assessment in this case is one where *Good Woodworking* would close if not sold to Magicalia. The OFT has been informed that the reason for closure would be to save overhead costs after a declining trend by *Good Woodworking* at the gross contribution level. Financial data and internal documents were

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<sup>5</sup> Anticipated acquisition by Future plc of Highbury House plc (April 2005), anticipated acquisition by Future plc of certain businesses and magazine titles from Highbury House Communications plc (June 2005) and anticipated acquisition by IPC Media Ltd of Horse Deals Ltd (August 2006).

<sup>6</sup> See paragraph 3.24 of OFT 516 'Mergers – substantive assessment guidance'.

provided in support of this contention. Although Future Publishing does not contend that this is a failing firm defence, it submits instead that it is nonetheless a factor to which the OFT should have regard when considering the appropriate counterfactual to the proposed merger situation.

13. The OFT applies a high evidential standard in circumstances where parties submit that the appropriate counterfactual involves the imminent exit of one of the merging parties (that is, to support the criteria of the failing firm defence).<sup>7</sup> For parties to rely on this defence successfully they must demonstrate to the OFT that there is no possibility of re-organising the target business (to prevent failure) and that there is no preferable competitive outcome to the merger. The OFT considers that Future Publishing has failed to satisfy the evidential burden, in particular the criteria that it has exhausted all possible avenues in relation to less anti-competitive alternative outcomes (such as the possibility that there is another buyer willing to purchase *Good Woodworking* absent the transaction). For this reason, the OFT believes that Future Publishing's submission regarding the appropriate counterfactual is not ultimately relevant to the competitive assessment in this case.

## **HORIZONTAL ISSUES**

### **Market shares**

14. The parties estimate that the retail value of newsstand sales for the 12 woodworking magazines active in the UK is approximately £1.5 to 2 million, with the total value of advertising sales in the sector of a comparable size. The OFT has been provided with evidence that the sector has been in gradual decline over the last five years.
15. The merger reduces the number of UK publishers of woodworking magazines from four to three and brings together the three best-selling titles. The parties submit that shares of supply by publisher and individual title have been fairly consistent over the last four years and, post-merger, Magicalia will have a share of supply for woodworking magazines of approximately 55-60 per cent (increment

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<sup>7</sup> See paragraphs 3.23 and 3.24 of OFT 516 'Mergers – substantive assessment guidance'.

approximately 20 per cent) based on either volume or value on retail sales.<sup>8</sup>

## Advertisers

16. A number of third parties opined that the three woodworking magazines published in the US (*Fine Woodworking*, *Popular Woodworking* and *American Woodworker*) do not compete for UK advertisers. Accordingly, they are not considered further.
17. In relation to the remaining nine UK woodworking magazines (including the merging titles), the OFT received mixed comments from advertisers as to the extent to which they are considered to compete. Some third parties considered that some of the magazines (like *Router*, *Woodcarving*, *Furniture & Cabinet Making* and *Woodturning*), with their niche readership bias and smaller circulation levels, cannot compete effectively for advertising with more general mainstream woodworking magazines (like the merging titles, *Traditional Woodworking* published by Waterways World and *New Woodworking* published by Guild of Master Craftsman (GMC)).
18. Evidence provided to the OFT suggests that the merging titles compete for advertisers, with around 35 per cent of *Good Woodworking's* customers also advertising in each of *The Woodworker* and *Practical Woodworking*.<sup>9</sup> Further, the OFT received three advertiser concerns that an effective competitor (and so the ability to play the merging titles off against one another) would be lost post-merger which could result in higher advertising prices. Two of these customers described two or more of the merging titles as 'must have' publications for advertising their products.
19. Despite the implied closeness of competition between the merging titles, evidence provided to the OFT suggests that for the majority of advertisers other woodworking titles act as an effective alternative constraint. Customers of the merging titles which responded to the

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<sup>8</sup> The parties' estimates do not include subscription sales due to lack of data. However, the OFT has not been provided with any evidence to suggest that share estimates would differ widely if included.

<sup>9</sup> The parties estimate that 75 per cent of *Practical Woodworking's* customers also advertise in *Good Woodworking*.

OFT's investigation (including those with concerns) advertise, on average, in three magazines other than those published by either of the parties (on accumulation, these include the full range of nine UK-published titles). The OFT therefore considers that customers could switch to alternate titles or adjust their total advertising budget with the merging titles (for example, alter the size or type of the advertisement they purchase) with relative ease in the event of a post-merger price rise.

## **Readers**

20. Competition between the parties for readers is less clear, but as with advertisers which acknowledge a number of woodworking magazines other than the merging titles from which to choose, an identical choice-set is also available to readers. Credible support to the notion of a woodworking magazine range being available to readers is given by a survey commissioned in respect of *Good Woodworking* (dated November 2004) provided to the OFT by the parties, according to which over half of all Good Woodworking readers purchase between one and five or more other woodworking magazines each month.
21. In summary, based on the evidence provided to it, the OFT believes that there are sufficiently close alternative woodworking titles (issued by two alternative UK publishers) to constrain Magicalia from raising advertising or cover prices higher than they otherwise would have been absent the merger or decreasing the quality of its woodworking magazines (that is, raising the implied price of such titles).

## **Barriers to entry and expansion**

22. When evaluating whether responses from potential competitors would be sufficient to constrain the merged entity, the parties submit that there are no significant barriers to entry into special interest consumer magazine, including woodworking, publishing. For example, the parties comment that editorial content and artwork, images and photographs can be bought easily.<sup>10</sup> The parties also opine that the incremental costs of launching new titles for an

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<sup>10</sup> By way of illustration, the parties note that the content of Good Woodworking is provided substantially by independent third parties, none of whom are contracted to provide content on an exclusive basis.

existing publisher, both in special interest consumer magazine areas where that publisher is already present and in new areas, are relatively modest as resources can be shared or shifted between magazines. While magazine retailers actively choose which magazines to place on their shelves, the parties argue that persuading retailers (through distributors) to put copies of a new title on their shelves is helped by the industry-standard 100 per cent sale or return structure which diminishes retail risk in stocking a magazine and retail promotion payments.

23. Publishers which provided comments to the OFT have confirmed that entry into the woodworking magazine sector is easy, with two successful, albeit small, new launches (the monthly *Popular Woodworking* and the bi-monthly *American Woodworker*, both issued by US-based publishers) in the last six years.<sup>11</sup> In the same period, one title exited (*Routing*)<sup>12</sup> and one title (*The Woodturner* formerly published by Nexus) was merged in 2004 into Magicalia's *The Woodworker*.
24. The OFT has considered whether entry by new competitors would be sufficient in time, scope and likelihood to constrain Magicalia post-merger. Third parties have confirmed that incentives to enter the sector are low and none of the special interest consumer magazine publishers not currently active in the woodworking sector which responded to the OFT's investigation indicated any imminent plans for entry. The parties suggest that this perceived lack of evidence of the likelihood of such entry in practice must be considered in the context of a declining market in consumer magazine sales.
25. The OFT also considered whether expansion by existing competitors could provide a sufficient, timely and likely competitive constraint on Magicalia post-transaction. Evidence provided to the OFT suggests that supply side substitution by an existing UK woodworking publisher to reposition the content and readership appeal of its titles, or to adjust advertising space capacity,<sup>13</sup> is relatively easy. For

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<sup>11</sup> Launched in 2001 and 2003, respectively.

<sup>12</sup> This title, formerly published by Highbury House plc, exited in 2004.

<sup>13</sup> If the demand for advertising in a particular woodworking magazine increases a publisher can add more pages to the magazine or change the mix of editorial content to advertising space in order to make more advertising space available.

example, *Good Woodworking* was repositioned in order to appeal to a younger reader demographic in 2006. Further, there have been numerous other examples provided to the OFT of woodworking magazines repositioning themselves, such as moving from a monthly to bi-monthly issues. For these reasons, the OFT considers that potential repositioning or expansion by other existing woodworking publishers (for example, *Waterways World* or *GMC*) would be sufficient to constrain *Magicalia* from increasing advertising or cover prices or deteriorating editorial quality post-merger.

### **Buyer power**

26. Readers are individuals who do not have buyer power.
27. Retail customers (supermarkets and other magazine retailers) have the ability to choose which woodworking titles they place on their shelves. The retailers who responded to the OFT's investigation do not regard woodworking magazines as essential shelf-stocking items and they commented that the woodworking titles they do stock can be displaced easily by other consumer magazines depending on levels of demand. None were concerned about this transaction.
28. Advertisers in magazines can be agencies or individuals or companies. The parties submit that media buying agencies are used by a relatively low proportion of advertisers in the merging titles, which was confirmed by the OFT's investigation, while third party evidence provided to the OFT as to the extent of buyer power held by individuals and companies was mixed and inconclusive.
29. Given the lack of competition issues in this case, the OFT does not consider it necessary to reach a firm conclusion on buyer power.

### **VERTICAL ISSUES**

30. No vertical issues are raised by this transaction.

### **THIRD PARTY VIEWS**

31. A few advertising customers were concerned about the transaction. These are addressed above.

32. One competitor was concerned about a reduction in the number of woodworking magazines being sold post-merger. This concern has been dismissed by the OFT as it has not been provided with any evidence to suggest that *Good Woodworking* will shut as a result of the transaction. Another competitor raised a concern that the merger may result in Magicalia cross-selling or cross-promoting its woodworking magazines. Again, the OFT believes that this concern can be discounted as its investigation revealed no basis for a positive and reasonable belief that such a likelihood would be increased, nor that any competitive change in this respect would be significant as a result of the transaction.

## ASSESSMENT

33. The parties overlap in the publication of woodworking consumer magazines in the UK, from which revenues are received from both readers and advertisers, in relation to which the impact of this transaction has been considered. The OFT has not concluded on the product frame of reference on the grounds that rigid definition where differentiated products such as niche consumer magazines are concerned might not necessarily reflect the competitive impact of the merger. The geographic scope is considered to be UK-wide as woodworking magazine sales and distribution are made within this area.
34. The merger reduces the number of UK woodworking magazine publishers from four to three and brings together the three best-selling titles (*Good Woodworking*, *The Woodworker* and *Practical Woodworking*). Evidence suggests that for some advertisers the merging titles are considered close substitutes. The OFT received three advertiser concerns that an effective competitive constraint could be lost post-transaction. However, on the balance of the evidence available, the OFT believes that there would be sufficient actual rivalry in this sector post-merger as there are two other UK publishers of woodworking magazines (Waterways World and GMC) to whose titles - up to six in total - advertising customers and readers could switch in constraint of Magicalia seeking to exercise market power. In relation to advertisers, this is further supported by the fact that all the customers who responded to the OFT's investigation (including those who were concerned) confirmed use of, on average, three woodworking magazines other than the merging titles.

35. While barriers to entry into woodworking magazine publishing appear low, the likelihood of entry appears diminished due to the steady decline of the sector over recent years. Notwithstanding this fact, evidence provided to the OFT suggests that other woodworking magazines (in particular, *Woodturning* and *New Woodworking*) could have their content and readership profile easily repositioned or their advertising capacity adjusted which would mitigate against any attempt by Magicalia to lower the quality and/or raise cover or advertising price of the merging titles from the levels they would have been absent the transaction. Taken in conjunction with a general lack of third party concerns, the OFT believes that the loss of any competitive constraint as a result of this transaction will not be significant.
36. Consequently, the OFT does not believe that it is or may be the case that the merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

## **DECISION**

37. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.