

## Anticipated acquisition by Future plc of certain businesses and magazine titles from Highbury House Communications plc.

The OFT's decision on reference under section 33 given on 15 June 2005. Full text of decision published 22 June 2005.

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### **PARTIES**

1. **Future plc (Future)** is an international publishing group primarily active in consumer magazines, with over 100 regular monthly magazines produced worldwide. For the last financial year, Future's turnover was approximately £190.4 million.
2. **Highbury House Communications plc (Highbury)** publishes over 90 consumer magazines predominantly in the UK, in addition to business magazines. For the last financial year, Highbury's UK turnover was approximately £95.6 million.

### **TRANSACTION**

3. On 14 April 2005, the OFT decided to refer a proposed bid by Future for the entirety of Highbury's share capital to the Competition Commission (the Decision). The area of concern in this Decision related to computer games magazines. This bid lapsed as it was conditional on OFT clearance.
4. On 29 April 2005, Future announced that it had entered into an agreement to acquire three Highbury subsidiaries and the business and assets relating to 38 magazine titles for a cash consideration of £30.5 million. Future subsequently agreed to acquire Spin, a cricket title. The present transaction does not involve computer games titles. The administrative deadline expires on 30 June 2005.

### **JURISDICTION**

5. As a result of this transaction, Future and the Highbury assets to be acquired will cease to be distinct. They overlap in the supply of certain special interest consumer magazines, in relation to which the share of supply test in section 23 of the Enterprise Act 2002 (the Act) is met. 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.

## RELEVANT MARKET

### Product market

6. The parties overlap in the publication of special interest consumer magazines (magazines sold via newsstand or subscription which cater for niche interests) in the UK. Special interest consumer magazine publishers receive revenues from both advertisers, who buy advertising space, and the purchasers of magazines.
7. The OFT recently examined this sector in the context of its earlier Decision, which informs the assessment of this case. As in the Decision, the OFT has not concluded on the frame of reference on the grounds that overly rigid definition where differentiated products are concerned might not necessarily reflect the competitive impact of a merger. Accordingly, the OFT has analysed the effect of this transaction on both a broad basis and, more narrowly, where the overlapping products of Future and the Highbury assets to be acquired might closely constrain each other.

### Geographic market

8. Magazine publishing houses active in the UK make most of their sales and distribute within this area. Accordingly, the relevant frame of reference for assessment is the UK.

## HORIZONTAL ISSUES

9. As regards competition for overall readership, post-transaction Future would be the fifth largest consumer magazine publisher, with a combined share of supply of 6.3 per cent (increment 0.6 per cent), and the second largest special interest consumer magazine publisher, with a combined share of supply of 11.6 per cent (increment 1.2 per cent).<sup>1</sup> Its combined share of total advertising revenue from consumer magazines will be well under 10 per cent.<sup>2</sup>
10. At a narrower level, Future and the assets of Highbury to be acquired overlap in various special interest segments and sub-segments:<sup>3</sup> motoring and motorcycling (motoring classics; motoring performance car), sports (cycle sports; cycle sports - cycling), women's interests (parenthood), and leisure interests (film and video reviews; home entertainment). As referred to in the Decision, there are segments or sub-segments where the combined shares of Future and Highbury would be relatively high; those in which the parties' combined share of supply exceeds 30

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<sup>1</sup> Audited circulation by retail sales value in 2004.

<sup>2</sup> Based on Periodical Publishers Association (PPA) 2003 estimates.

<sup>3</sup> Following the industry-defined categories used by the Audited Bureau of Circulation (ABC), as adopted for convenience by the parties.

per cent are considered below. As an initial matter, however, it should be noted that third party concern was generally absent in the inquiry leading to the previous Decision – other than in relation to the computer games segment – although that transaction covered all the titles and segments at issue in this case.

### **Home Entertainment**

11. Highbury's titles being transferred account for around 77 per cent of sales in the home entertainment segment.<sup>4</sup> However, Future currently only has one home entertainment magazine title, Digital Home, accounting for approximately 3 per cent of newsstand sales. Accordingly, the increment based on share data alone is quite small. Moreover, Digital Home, which focuses on futuristic technology for the whole house, does not appear to be a close competitor in content to the Highbury titles to be acquired, which focus purely on audio/visual equipment. A number of other publishers also compete with the parties in this sub-segment, such as Haymarket's audio/visual equipment title and Smart House (also covering futuristic technology for the whole house), and in related sub-segments, such as Haymarket and IPC in audio equipment. In light of these factors, and in the absence of segment-specific third party concerns, home entertainment magazines are not considered further.

### **Motoring and Motor-cycling**

12. The parties' combined share of circulation is less than 5 per cent in the motoring and motor-cycling segment. ABC circulation figures list only three titles in the narrower performance car sub-segment, indicating that Future's post-merger share would be 50 per cent (19 per cent increment). However, this data is an unhelpful guide in this case, because ABC does not audit a larger number of other titles by major publishers that are either dedicated to performance cars (e.g., Dennis's Evo) or carry significant such coverage (e.g., BBC's Top Gear and EMAP's [Revs]). Accordingly, there appear to be sufficient existing titles published by its competitors to constrain Future, a conclusion reinforced by the absence of any third party concern in relation to this sub-segment.

### **Cycle Sports**

13. Future intends to acquire a single cycling title, Pro Cycling, from Highbury, which accounts for approximately 5 per cent of the cycle sports segment (estimated by the parties to be worth in total around £7 million<sup>5</sup>). Future itself accounts for 30-35 per cent of the segment based on its existing Cycling Plus, Mountain Biking

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<sup>4</sup> Newsstand copy sales in 2004. Future intends to acquire the following home entertainment titles from Highbury: DVD Review; Home Cinema Choice; What Video & Widescreen Entertainment; What Home Cinema; Essential Home Cinema; What Plasma; and, What Satellite and Digital TV.

<sup>5</sup> Retail sales value in 2004.

UK, and What Mountain Bike? titles.<sup>6</sup> Most of this share is from Future's mountain biking titles, which are unlikely to represent close substitutes for readers of and advertisers in Pro Cycling. If BMX and mountain biking magazines are excluded from the share data, the combined share will be only approximately 20-25 per cent (increment approximately 10 per cent), although the remaining share is accounted for by a single publisher, IPC Media.

14. Advertisers confirmed that Future and Highbury compete, but no advertiser described the parties' magazines as 'must have' products and advertisers believed they could switch to alternatives. On this basis, there are no grounds for believing that Future could profitably increase rates to these customers post-transaction. In addition, as referred to in the Decision, advertisers can use media buyers (generally representing a range of customers with a range of products) who may possess the power to constrain prices through the threat of an adjustment to their total advertising budget with the parties.
15. In relation to readers, there is likely to remain sufficient actual competition to Future in cycle sports magazine publishing to constrain its ability to raise some or all of its titles' cover prices higher than they would have been absent the transaction, or decrease the quality of its magazines (i.e. raise the implied price of such titles). IPC Media, with its three cycle sports titles, appears to operate as the closest competitor of each of Future's titles and Pro Cycling – a view supported by the parties' internal documentation. In general, IPC Media has accounted for more than 50 per cent of cycle sports magazines (and 75 per cent of cycling magazines not covering BMX and mountain biking) over at least the last five years and can therefore be expected to continue to exert a strong competitive constraint post-merger. IPC's position would make it highly unlikely that Future could negotiate exclusive deals with advertisers or retailers in relation to this sub-segment. Accordingly, it would appear that the loss of any competitive constraint as a result of this transaction in the cycle sports sub-segment will not be significant.

#### **Barriers to entry and expansion**

16. Although one third party commented on the potential difficulty of achieving retail shelf space for cycle sport launch titles, third parties generally did not consider barriers to entry, including into the cycle sports sub-segment, insurmountable.

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<sup>6</sup> Newsstand copy supply and sales in 2004.

## **Buyer power**

17. As stated above, media buyers appear to have buyer power. Individual purchasers of magazines are unlikely to have buyer power.

## **VERTICAL ISSUES**

18. One third party expressed the concern that this transaction would lead to a consolidation of the parties' distribution, leading to a possible reduction in the negotiating power of retailers as a consequence. There is no evidence to suggest, however, that any change in this respect as a result of this transaction will be significant.

## **THIRD PARTY VIEWS**

19. On the whole, third parties were not concerned about this transaction either in general or in relation to any of the overlapping special interest segments. As noted above, in general third parties did not raise concerns in the inquiry leading to the previous Decision other than in relation to the computer games segment, although that transaction covered the titles and segments discussed above.

## **ASSESSMENT**

20. Future and the Highbury assets to be acquired overlap in certain areas of special interest consumer magazines. Overall, and in most segments, the share of supply is low. In relation to home entertainment magazines, where the combined share is higher, none of the Highbury titles to be acquired are the closest competitor of Future's sole home entertainment title (which alone accounts for a very small share). In relation to motoring and motorcycling, the post-merger shares are low except for the performance subsegment, where circulation data fails to reflect the presence of numerous significant (non-audited) competing titles. Our assessment therefore focused on cycle sports magazines where the combined position of Future and the Highbury titles to be acquired appears strongest, taking into account their relatively high combined share and the small number of players which currently publish cycling magazines. This might suggest that the parties' titles closely constrain each other.
21. For advertisers, the possibility of Future charging higher rates post-transaction can be discounted on the basis that the parties' cycle sports titles may be easily substituted with other products and, in any event, media buyers appear to be able to constrain price increases when negotiating advertising rates for their customers across a wide range of titles.
22. In relation to readers of cycle sports magazines, the OFT's investigation revealed no basis for a positive and reasonable belief that Future would have the incentive

to lower quality and/or raise cover price on some or all of its cycle sports titles from prevailing levels absent the transaction. The increment to Future's share of cycle sports magazines is small (approximately 5 per cent) and the parties do not appear to be each other's closest substitutes in cycle sports magazines. Moreover, IPC Media publishes directly competing titles, providing sufficient actual rivalry to constrain Future's post-acquisition behaviour.

23. Taken in conjunction with a general lack of third party concerns including – as regards these segments – in the recent previous inquiry, the OFT believes that the loss of any competitive constraint as a result of this transaction will not be significant.
24. 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**

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