OFFICE OF FAIR TRADING

Anticipated acquisition by National Grid Transco plc of Crown Castle UK Holding Limited

OFT's decision on reference under section 33 given on 16 August 2004

Please note that square brackets indicate information excised, or exact figures replaced by a range, at the parties' request.

PARTIES

1. **National Grid Transco plc (NGT)** is an international network utility group, primarily focused on energy delivery. In the UK, it owns and operates the high voltage electricity transmission system across England and Wales and the vast majority of GB's gas transportation and distribution pipeline infrastructure. Gridcom UK (Gridcom) is a wholly-owned subsidiary of NGT and is a provider of wireless and fixed line infrastructure sites and services to the UK communications industry. NGT's UK turnover in the 2003 financial year was approximately £4.7 billion.

2. **Crown Castle UK Holdings Ltd (Crown Castle)** is a subsidiary of Crown Castle International Corporation, a US corporation listed on the New York Stock Exchange. Crown Castle's activities in the UK fall into two principal areas: (i) the provision of towers and sites to Mobile Network Operators (MNOs) and (ii) the provision of radio and TV broadcast transmission. In the twelve months to 31 December 2003, Crown Castle's UK turnover was £233 million.

TRANSACTION

3. NGG Telecoms Investment Limited, a subsidiary of NGT, will acquire the entire issued share capital of Crown Castle. The parties notified the Office on 5 July 2004. The statutory deadline expires on 16 August 2004.

JURISDICTION

4. As a result of this transaction NGT and Crown Castle will cease to be distinct. The UK turnover of Crown Castle exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it will 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

5. The parties' UK activities overlap in (i) the provision of telecommunications and wireless communications site rental and (ii) services ancillary thereto.

Product market

Provision of sites

6. A site is a structure that houses the telecommunications equipment necessary to ensure full network coverage in a given area. Once MNO radio planners select the area in which a site is necessary, the MNO's acquiring agents may build their own sites (self-provision), lease a site from another MNO (site sharing), or lease from an independent site provider – such as NGT/Crown Castle or an independent property owner (commercial or independent providers). Where the site is provided by a land owner, such as a farmer, the MNO will need to construct a tower and provide the infrastructure to house the transmission equipment. A mast is required if the site is located on an existing structure, for example a building's roof. Planning permission is required for a new site to be set up, or for equipment to be added to an existing site, which will not be granted if spare sites exist in the area.[1] The MNO will need to provide only the transmission equipment where the site is provided by or shared with a competing MNO, or by a commercial or independent provider or property owner. Sites are either active (in use with all capacity taken); active sharable (in use but spare capacity exists); or potential (any building or land that could be used if there was demand for that geographic location). The scope of the latter is unknown but potentially vast given the number of buildings and spare land that could serve this purpose. Non-sharable sites are not generally traded and thus tend not to represent competitive alternatives. Accordingly, both are excluded from the frame of reference.

Ancillary services

7. Among the number of ancillary services provided by the parties, the only overlap is in the provision of portfolio management and marketing services for owners of active and potential sites

8. The product frames of reference to analyse this acquisition are the provision of (i) active sharable sites for telecommunications equipment, and (ii) portfolio management and marketing services for owners of active and potential sites.

Geographic market

9. The technical requirement to site equipment in specific locations in order to provide full network coverage implies a strong localised element to supply and demand. In more densely populated urban areas, for example, demand calls for a higher number of active sites, as each site can only handle a finite number of calls. There is, however, scope for MNOs to re-configure the layout of their sites in order to avoid high cost sites within a particular locality whilst ensuring

[1] Planning Policy Guidance 8 (PPG8) : Telecommunications, ODPM

the level of network coverage required. One alternative is to use two sites as opposed to a single site; a second alternative is to reconfigure the layout of sites in the broader area to avoid a specific high-cost location.

10. There are also national elements of competition to consider due to the national framework agreements in place and national relationships between the major site providers and the MNOs. The parties have submitted arguments in favour of a UK-wide market arguing that they utilise a national price tariff which is adjustable for various site-specific costs.

11. Accordingly, the OFT's analysis considers local as well as national elements of competition in the relevant services.

COMPETITION ISSUES

Market shares

Provision of sites

12. The UK's five MNOs account for almost 70 per cent of supply of UK shareable active sites. Post merger, the parties will be the second largest provider behind Orange, with a share of [15-25 per cent] (an increment of [5-10 per cent]), and the largest independent (non-MNO) provider. Overall, this transaction does not appear to raise concerns at a national level due to the range of options available to the MNOs post-merger.

13. At a local level, the merger could raise concerns if there were to be areas where (i) the parties are both present; (ii) MNOs have few or no other existing options; and (iii) planning permission to open new sites is refused. However, the evidence suggests that the chance of this occurring is sufficiently remote to be discounted. First, the parties submit, and third parties give some support to the contention, that the parties' site portfolios are geographically complementary to a significant extent: NGT's sites, found on electricity pylons and gas land banks are generally in rural areas, while Crown Castle's sites are primarily found in urban areas. Indeed, the parties' low respective shares also suggest that the number of areas in which their respective sites are closest will be limited, and in these cases, given the number of sites owned by competitors in relation to the parties' sites, in most instances the parties will continue to face some level of competition. Second, lack of MNO concern in relation to specific areas tends to support the proposition that they have options other than the merging parties even when there are no competing active sites available (e.g. using two sites in bordering areas or re-configuring their networks in order to avoid siting an antenna in this specific location, or leasing land to open a new MNO-owned site). Third, there are a large number of potential sites in any given area; whilst planning guidance encourages site-sharing where possible, there is recognition within the guidance of the importance of enabling competition between MNOs, which may extend to the necessity to facilitate competition for sites. In addition, demand for the number of sites is forecast to grow with the rollout of 3G technology, which reduces the likelihood of planning permission being refused in a given area on the grounds of existing spare capacity.

Ancillary services

14. Crown Castle manages and markets BT's sites and Gridcom manages [ ] sites for third parties and has a further [ ] sites potentially available to it to market. One third party was concerned that post acquisition, the merged entity would only market its own sites at the expense of the sites which it markets on behalf of third parties. However the choice of a site is demand-driven with the MNO's agent choosing the site best matching the MNO's requirements. In addition, there are a wide range of competitors including specialised competitors such as NTL, Field and Towers and Quintel and a range of surveyors and property managers already active in the management and marketing of sites. Due to the ability of site owners to switch to a wide range of alternative site managers, material competition concerns do not arise and these services will therefore not be considered further.

Barriers to entry and expansion

15. The main barrier to entry in any given local area is the need to obtain planning permission for new sites or to add to an existing site. However, if planning permission appears difficult to obtain in a given area, then it is always possible for the MNO to reconfigure its network to avoid using a site in a specific area, as discussed above. At the national level, the Church of England's properties are now being actively marketed by Quintel. There has also been entry by individual property owners who have chosen to make their properties available for profit to the MNOs. Overall, there appears to be limited barriers to entry both on a local and national level.

Buyer power

16. The main customers for these sites are the UK's five current MNOs, sophisticated buyers who have a demonstrated capacity to self-provide. The independent site providers benefit from strong relationships with the MNOs on a national basis, as the MNOs are their main and in most cases only customers, for space on buildings and land that would otherwise not generate this incremental revenue. The desire to retain such relationships gives the MNO some degree of leverage in discussions over individual sites. In addition, MNOs have the possibility of retaliating against a national provider (such as the parties) that charges high rents in areas where it faces little or no competition by avoiding using this operator's sites in other areas where there are a wider range of alternatives. These factors combined would indicate that MNOs hold considerable buyer power.

THIRD PARTY VIEWS

17. OFCOM had no concerns. The views of the MNO customers were mixed. Third party concerns relating to post-merger price increases have been addressed above.

ASSESSMENT

18. This transaction will merge two independent providers of active sites used by the UK's five mobile network operators (MNOs) to achieve wireless phone coverage. MNOs have a proven capacity to self-provide, accounting for over two-third of national supply of shareable sites, thus putting the parties' relatively small combined share of [15-25 per cent] in perspective.

19. At a local level, there could be a limited number of areas where the parties may have the closest or only sites. If so, the evidence suggests that there are various countervailing factors, including the buyer power of MNOs and the alternatives open to them, and generally low barriers to entry to prevent significant competition concerns arising within these localities.

20. 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

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