

# COMPLETED ACQUISITION BY MACQUARIE UK BROADCAST VENTURES LTD OF THE NATIONAL GRID WIRELESS GROUP

## Statement of issues

### The reference

1. The Inquiry Group (the Group) is required to decide:
  - (a) whether a relevant merger situation has been created by the completed acquisition by Macquarie UK Broadcast Ventures Ltd (MUKBV) of National Grid Wireless Group (NGW); and if so
  - (b) whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.

### Market definition

2. NGW and MUKBV (through its subsidiary Arqiva Limited (Arqiva)) overlap in the supply of terrestrial transmission services to radio and television broadcasters, multiplex operators and wireless telecommunication operators. For analogue broadcasting these services comprise two complementary inputs: access to sites and masts (network access); and provision of managed transmission services (MTS). MTS typically involves installation of transmitters, network monitoring, ensuring the quality of the transmitted signal and maintenance of transmission equipment. Digital broadcasting requires a further complementary input, multiplexing services (compressing channels to combine them into a single multiplex signal). Arqiva provides multiplexing services to multiplex operators (ie to organizations holding multiplex licences) but is not itself a multiplex operator. NGW, which holds two multiplex licences, contracts with broadcasters to transmit channels through the multiplexes it operates but contracts out the provision of multiplexing services to a third party. For wireless telecommunications, the services comprise access to sites and masts, along with provision of ancillary services.
3. In deciding on the appropriate definition of the economic markets affected by the merger (the 'relevant markets'), the Group will consider in particular:
  - (a) whether the provision of terrestrial transmission services to television broadcasters and multiplex operators, to radio broadcasters and multiplex operators, and to wireless communications operators, form a single product market or one or more separate markets;
  - (b) whether it is necessary or desirable to distinguish the product market in relation to analogue television broadcasts from that for digital television broadcasts;
  - (c) whether it is necessary or desirable to distinguish the product market in relation to analogue radio broadcasts from that for digital radio broadcasts;
  - (d) whether it is necessary or desirable to distinguish the product market in relation to national and sub-national radio broadcasts;

- (e) whether, in relation to each of the above, there are separate product markets for network access, MTS and (in relation to digital broadcasting) provision of multiplexing services;
- (f) whether it is necessary or desirable to distinguish the provision of site access and ancillary services to mobile network operators from that to other wireless communications providers;
- (g) whether, in relation to services to wireless communications providers, there are separate product markets for provision of access to sites and provision of ancillary services; and
- (h) the extent of the geographic markets in each case, in particular whether it is necessary or desirable to distinguish between national and sub-national radio broadcasts.

### **The counterfactual**

4. The Group will compare the expected effects of the acquisition against the situation that would have been likely to have occurred in the absence of the transaction (the counterfactual). In particular, the Group will consider, in the absence of the acquisition:
  - (a) whether the most likely alternative would have been that NGW would have been acquired by a third party; and
  - (b) the implications of any such sale for future competition between NGW and Arqiva.

### **Assessment of the competitive effects of the merger**

#### ***'Theories of harm'***

5. Theories of harm are used to help focus the analysis of the possible effects of the acquisition. Based on the initial evidence received, the Group has provisionally identified five possible ways in which the acquisition might result in an SLC and which it would like to investigate further. The identification of these theories of harm should not be taken to imply that the Group has reached any conclusions.
6. The Group will consider, in particular, the following theories of harm:
  - (a) The merger may remove competition between Arqiva and NGW in the supply of terrestrial transmission services to television broadcasters and/or multiplex operators, leading to an SLC in the supply of MTS services and/or in the provision of site access solutions (horizontal effects).
  - (b) The merger may remove competition between Arqiva and NGW in the supply of terrestrial transmission services to national and/or sub-national radio broadcasters and/or multiplex operators, leading to an SLC in the supply of MTS services and/or in the provision of site access solutions (horizontal effects).
  - (c) The merger may inhibit the ability of Ofcom to regulate the price of network access to terrestrial broadcast sites through the loss of Arqiva and NGW as 'informed customers' of access to the other's sites, and/or through loss of the possibility of comparison between Arqiva's and NGW's costs (horizontal effects).

- (d) To the extent that network access, MTS and multiplexing services may be seen as separate markets, the loss of competition in provision of MTS and/or site access solutions, combined with post-merger involvement in multiplex operation and provision of multiplexing services, may foreclose competition for new multiplexes and/or lead to the transfer of confidential information between Arqiva's MTS services arm and the merged company's multiplex operations (vertical effects).
  - (e) The merger may remove competition between Arqiva and NGW in the provision of site rental and/or ancillary services for telecommunications rental to mobile network operators and/or other wireless communications providers (horizontal effects).
- 7. The Group will consider whether, compared with the levels that would have prevailed in the absence of the acquisition, one or more of the above might cause some customers to face:
  - (a) an increase in price in obtaining terrestrial transmission services; and/or
  - (b) a reduction in quality; and/or
  - (c) a reduction in innovation.
- 8. The identification of these theories of harm does not preclude an SLC being identified on another basis in the light of further work.

### **Related competition issues**

- 9. Among the issues the Group will consider when determining whether the acquisition may be expected to lead to an SLC are:
  - (a) whether, and to what extent, Arqiva and NGW have historically competed with each other, currently compete, or are likely to compete in the future in any of the relevant markets, including consideration of opportunities for competition that may arise from:
    - (i) the award of the second national commercial radio multiplex or new sub-national multiplexes;
    - (ii) expiry, termination or renegotiation of existing contracts;
    - (iii) technological advances increasing capacity on existing multiplexes, enabling them to accommodate more channels; and
    - (iv) digital switchover, leading to the allocation of additional spectrum;
  - (b) the impact of regulatory requirements (including conditions imposed on broadcasters) on competition in the relevant markets, and the significance of having Arqiva and NGW as integrated providers of MTS and network access for the regulatory regime;
  - (c) whether, and if so to what extent, Arqiva and NGW have historically faced, currently face or are likely to face actual and/or potential competition from other providers of terrestrial broadcast services (or elements of such services) in some or all of the relevant markets;

- (d) the effects of competition in each of the relevant markets, in terms of price, range of services being offered, quality of services, and levels of innovation;
  - (e) whether there are significant barriers to entry or expansion in any of the relevant markets; in particular, the Group would like to understand the significance in terms of entry or expansion of:
    - (i) the need for a UK-wide skilled and experienced field force;
    - (ii) economies of scale in terms of numbers of customers;
    - (iii) economies of scope in terms of providing similar services across a range of sectors;
    - (iv) complexity and nature of the technology, outside the expertise of other engineering workforces;
    - (v) reputation, and the fact that because contracts are long-term the market cannot be tested often;
    - (vi) sunk costs, such as the cost of acquiring and installing necessary equipment; and
    - (vii) the vertical integration of the parties, both in terms of generating savings and synergies and in term of access to information (eg on sites) that provides a competitive advantage;
  - (f) the extent of any buyer power in the relevant markets;
  - (g) the nature of the contractual arrangements between broadcasters and MTS providers, including the ability of broadcasters to secure incentives to drive down costs, improve performance, promote innovation and/or secure benefits of efficiency gains by contractual means; and
  - (h) the nature of the contractual relationships between multiplex operators, multiplex service providers and providers of MTS, and the opportunities and incentives that these might provide to the merged entity to foreclose competition that might otherwise arise from new multiplexes.
10. The Group will take account of the implications for its analysis arising from developments affecting competition between terrestrial wireless transmission and the development of other platforms (eg satellite or cable) or the convergence of different technologies (eg Internet telephony, Internet television or Internet radio).

### **Possible remedies**

- 11. Should the Group conclude that the acquisition has resulted, or may be expected to result, in an SLC, it will consider whether, and if so what, remedies might be appropriate, and will issue a further statement at a later date.
- 12. In any consideration of possible remedies, the Group will consider whether any relevant customer benefits may be expected to arise as a result of the acquisition and, if so, what these benefits are likely to be and which customers would benefit. Customer benefits are benefits to customers at any point in the value chain and are not limited to benefits to end-consumers.