

REFERENCE RELATING TO THE COMPLETED ACQUISITION BY MACQUARIE UK BROADCAST VENTURES LIMITED OF NATIONAL GRID WIRELESS GROUP

Notice of possible remedies under Rule 11 of the *Competition Commission Rules of Procedure*

Introduction

1. On 8 August 2007, the Office of Fair Trading, in exercise of its duty under section 22 of the Enterprise Act 2002 (the Act) and its power under section 35(6) of the Act, referred to the Competition Commission (CC) the completed acquisition by Macquarie UK Broadcast Ventures Limited (MUKBV) of National Grid Wireless Group (NGW).
2. In its provisional findings on the reference notified to MUKBV and NGW (the main parties) on 30 November 2007, the CC concluded provisionally that the acquisition had resulted in the creation of a relevant merger situation; and that the creation of that situation may be expected to result in a substantial lessening of competition (SLC) in relation to the markets for the provision of Managed Transmission Services and Network Access (MTS/NA) to television broadcasters and to radio broadcasters within the UK.
3. This notice sets out the actions which the CC inquiry group (the Group) consider might be taken by the CC for the purpose of remedying the SLC and any resulting adverse effects identified in the provisional findings, and invites parties to comment on possible remedies (see note).

Criteria

4. In choosing appropriate remedial action, the CC will have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it. When deciding what is an appropriate remedy, the CC will consider the effectiveness of different possible remedies, and their associated costs, and will have regard to the principle of proportionality. Between two remedies which the CC considers equally effective, it will choose that which imposes the least cost or restriction.

Possible remedies on which views are sought

Divestiture

5. The Group invites views on whether a divestiture remedy would be effective in addressing the SLC identified as expected to result from the merger. In particular, the Group invites views on:
 - *The scope of the divestiture package.* The CC generally prefers the divestiture of an existing business that can compete effectively in the market on a stand-alone basis rather than divestiture of part of an operating unit or a collection of assets. This is because divestiture of an existing business normally reduces the risk of an unsuccessful divestiture. The Group is currently of the view that, in this case, the full divestiture of NGW would effectively address the SLC. However, views are

also invited on whether an appropriate partial divestiture package could be assembled through which MTS/NA could be supplied for television and for radio and how the possible risks of such an approach, for example in separating the necessary assets, could be successfully contained. In particular, the Group invites views on what parts of the merged entity would be needed for the supply of MTS/NA for television and for radio and what assets would need to be included for the divested business to function effectively. In addition, the Group invites views on which existing contracts and customer relationships should also be included in such a divestiture package.

- *Possible suitable purchasers.* In order to be an effective remedy, divestiture would need to result in the divested assets being purchased by someone who would operate as an effective competitor in the market. In general, the CC takes the view that a suitable purchaser should:
 - be independent of the parties to the merger;
 - have the necessary financial resources, incentives, and access to appropriate expertise and assets in order to enable the divested business to develop as an effective competitor in the market; and
 - be free from competitive concerns.

6. The Group also invites views on the effect that full or partial divestiture, as detailed above, would have on any relevant customer benefits (discussed below). In particular, views are invited on whether some or all of any relevant customer benefits may be retained through the implementation of a divestiture remedy (either full or partial divestiture) involving:

- (a) provision for creation of a joint venture between MUKBV and the purchaser of the divested assets to assist the implementation of Digital Switchover; or
- (b) flexibility on the timing of divestment.

In particular, the Group invites views on what additional measures would be necessary in order for the divested business and possible creation of a joint venture to operate effectively.

Behavioural remedies

7. The Group is concerned that behavioural remedies may not be effective in addressing the SLC and its resulting adverse effects and in addition are likely to be difficult to monitor and enforce. Nevertheless the Group will consider any other practical remedies—structural or behavioural—that the main parties or other persons would like to propose which they consider would address the expected SLC effectively.

8. Two types of behavioural remedies have been identified that the Group may consider further in this case:

- *Measures to reduce barriers to entry in MTS/NA for television and radio.* The Group notes that while the following remedies may remove some barriers to entry, they may not be sufficient to remedy the loss of competition resulting from the merger:

- provision for transfer of stranded MTS assets at the conclusion of MTS/NA contracts in order to ease switching; and
 - a requirement for the merged entity to make its field force available to existing or potential MTS providers.
- *Measures to reduce the adverse effects of the SLC.* In general, the CC would prefer to remedy the SLC. However, the Group may consider other remedies that reduce the adverse effects of the SLC such as:
 - changes to existing contracts;
 - at contract termination, the renewal of the merged entity contracts with customers on like (or improved) terms; and
 - modification to the system of economic regulation, including price regulation of MTS/NA, possibly supported by functional separation of the price regulated elements of the business.
9. The Group invites views on whether these remedies (either individually or in combination) would address the SLC or its adverse effects and the measures that would be necessary for any such remedy to operate effectively.

Relevant customer benefits

10. The Group will also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 30 of the Act arising from the merger.
11. A benefit is only a relevant customer benefit if the CC believes that: (a) the benefit has accrued or may be expected to accrue within a reasonable period as a result of the merger concerned; and (b) the benefit was, or is, unlikely to accrue without the merger concerned or a similar lessening of competition. Relevant customer benefits will comprise lower prices, higher quality or greater choice of goods or services in any market in the UK, or greater innovation in relation to such goods or services.
12. The main parties have said that the merger would give rise to:
- cost savings including operational synergies, capital expenditure synergies and savings in Digital Switchover roll-out, which would be passed through to customers (at least in part); and
 - reducing the risks in the Digital Switchover process.
13. The Group invites views as to:
- whether the benefits claimed by the main parties are relevant customer benefits as defined by the Enterprise Act 2002;
 - the timing and relative certainty of the proposed benefits;
 - the scale of the benefits including the extent to which the benefits will be passed on to customers;
 - whether any remedy should be modified to take account of any benefits to customers; and

- whether the benefits which have accrued or may be expected to accrue are substantially more important than the detrimental effects.

The next steps

14. The main parties are requested to provide any views in writing, including any alternative remedies they wish the Group to consider, by 14 December 2007, in order for these views to be taken into account at the next hearings with the main parties.
15. A copy of this notice will be posted on the CC's website. Other interested parties are invited to give their views on possible remedies, in writing, by 14 December 2007, in order for these views to be taken into account at the next hearing with the main parties.

(Signed) DIANA GUY
Group Chairman
30 November 2007

Note: This Notice of possible actions to remedy the SLC and any resulting adverse effects is given having regard to the Group's provisional findings notified to the main parties on 30 November 2007. The main parties have 21 days in which to respond to those provisional findings. In the light of any responses by the main parties, or by other interested or affected third parties, the Group's findings may alter, in which case the Group may consider other possible remedies, if appropriate.