

**NTL Incorporated
and
Cable & Wireless Communications plc**

A report on the proposed acquisition



COMPETITION COMMISSION

NTL Incorporated and Cable & Wireless Communications plc

A report on the proposed acquisition

**Presented to Parliament by the Secretary of State for
Trade and Industry by Command of Her Majesty
March 2000**

Members of the Competition Commission as at 25 February 2000

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¹These members formed the Group which was responsible for this report under the chairmanship of Mrs D P B Kingsmill.

Note by the Department of Trade and Industry

In accordance with section 83(3) and (3A) of the Fair Trading Act 1973, the Secretary of State has excluded from the copies of the report, as laid before Parliament and as published, certain matters, publication of which appears to the Secretary of State to be against the public interest, or which he considers would not be in the public interest to disclose and which, in his opinion, would seriously and prejudicially affect certain interests.

The omissions are indicated by a note in the text or, where space does not permit, by the symbol ✂.

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Part I

Summary and Conclusions

1 Summary

1.1. On 12 November 1999, the Secretary of State for Trade and Industry asked us (see Appendix 1.1) to investigate and report on the proposed acquisition by NTL Incorporated (NTL) of the cable business of Cable & Wireless Communications plc (CWC).

1.2. NTL is the second largest operator of cable telephone and pay-TV services in the UK, and CWC the third largest. The combined company would account for 27 per cent of all subscribers to pay-TV in the UK, the leading supplier of which is British Sky Broadcasting Group plc (BSkyB) which uses satellite transmission with a 50 per cent share. BSKyB through its innovation and investment has built up a strong position in supply of content, particularly as a result of having acquired rights to premium sport and film: it has also been the first operator to introduce digital and interactive services and has done so at considerable cost. NTL and CWC both argued that the further industry consolidation which the merger would bring about was necessary to enable the cable industry to achieve competitive scale and to compete more effectively with BSKyB.

1.3. The reference elicited strong expressions of concern about a number of issues important to the further development of the cable industry, although views were divided. Main concerns were about the merger's effect on the wholesale market for pay-TV content and on the balance of market power between pay-TV platforms and, in particular, between cable and satellite services. But there was also some concern about the effect of the merger on telecommunications services. In several cases, the concern was based on a perception of the market strength of cable operators arising from the particular technological capacity of cable to deliver pay-TV, telephony and also digital interactive services; the 'closed' nature of the cable networks whereby the cable operator is in the sole position to determine which programme services can be accessed by its subscribers; and the ability of cable operators to bundle the supply of a range of services and the charges to subscribers for them. Others, however, saw scope for the merger to enhance competition and particularly competition with BSKyB.

1.4. NTL and CWC operate in different geographical areas, and hence the merger has no direct effect on competition between them. Nor did we find any evidence that the merger would materially reduce potential direct competition or indirect competition, such as competition among cable operators themselves in innovation or the copying of best ideas.

1.5. A main concern was whether the merger could increase or enhance the market power of the merged entity in relation to that of pay-TV channel or programme providers, arising, for example, from NTL's ability following the merger to threaten in contract negotiations to deny content providers access to two of the three substantial cable companies, representing a population of over a quarter of all pay-TV subscribers. We do not believe the merger should substantially affect the market power of NTL relative to content providers. Although NTL has the objective of securing better terms from content providers, it will continue to need to offer consumers a variety of content equivalent to that of other pay-TV platforms, and this need will increase when the introduction of digital technology increases the number of channels that can be carried. Also, the content providers will themselves have a degree of countervailing power. Nor do we believe that NTL's intention to acquire broadcasting rights will distort competition in the market for the acquisition of such rights.

1.6. Neither do we believe that the merger may be expected adversely to affect competition between platforms, but rather that it may enhance the efficiency with which the technological advantages of cable can be deployed. This would have a beneficial effect particularly on competition between pay-TV platforms, though BSkyB will retain a strong position in the market. Thus there should be benefit to consumers in the longer term. Nor do we see adverse effects on competition in telecommunications given the low market shares of both NTL and CWC, compared with British Telecommunications plc.

1.7. We do not therefore believe the merger would adversely affect competition or impact adversely on consumers. We acknowledge, however, that there is considerable uncertainty about how the relevant markets will develop. There could be a significant increase in competition from other platforms, including new use of the ordinary telephone network to transmit pay-TV services. But conversely cable could successfully deploy its technological superiority over other platforms. Some of the issues raised with us, for example whether there should be forced or open access to the cable networks, as opposed to the current closed nature of the cable network referred to above, went in our view substantially wider than the effect of the merger. Should NTL—or the cable industry in general—prove to have market power in future, the industry is already subject to a regulatory structure with the powers to examine such issues at that time to remedy any adverse effects that may be seen to have arisen.

1.8. We have concluded that the merger may not be expected to operate against the public interest.