



DETERMINATION OF MERGER NOTIFICATION M/07/061 – NEWSCORP/NGT/NGC-UK

Section 21 of the Competition Act 2002

Proposed acquisition of joint control over NGC-UK Partnership by News Corporation and NGT Inc.

Dated 22/11/07

Introduction

1. On 26 October 2007 the Competition Authority (the "Authority"), in accordance with section 18(1)(b) of the Competition Act, 2002 ("the Act") was notified, on a mandatory basis, of a proposed acquisition of joint control over NGC-UK Partnership ("NGC-UK") by News Corporation ("NewsCorp") and NGT Inc. ("NGT").
2. The Authority advised the parties and the Minister that it considered the proposed transaction to be a "media merger" within the meaning of section 23 of the Act.

The Undertakings Involved

The Acquirers

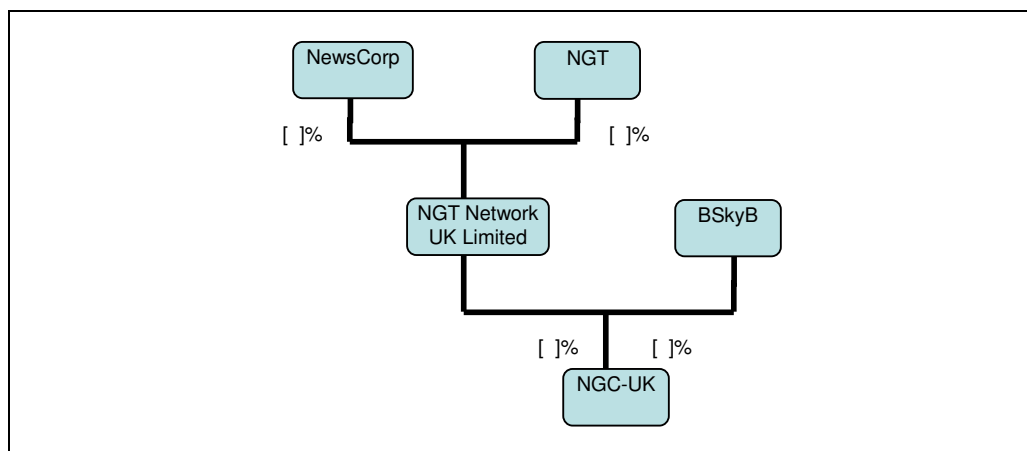
3. News Corp is a Delaware-incorporated corporation. It has a primary listing on the New York Stock Exchange and secondary listings on the Australian Stock Exchange and the London Stock Exchange. NewsCorp is an international media and entertainment company with worldwide operations. While the activities of NewsCorp are conducted principally in the United States, Continental Europe, the United Kingdom, Australia, Asia and the Pacific Basin, its activities in the State include the following:
 - distribution of motion pictures for cinema exhibition and home entertainment and television programming (produced by Twentieth Century Fox);
 - broadcasting of the following television channels: FX (+2hr), Fox News, Baby TV, Star Gold, Star One, Star Plus and Star News;
 - [satellite broadcasting through a non-controlling minority shareholding in BskyB];
 - distribution of the following newspapers through an independent distributor: The Irish Sun, The Times, Irish News of the World and the Irish edition of the Sunday Times;
 - distribution of books (by HarperCollins Publishers); and,
 - development of conditional access and interactive television technologies through NDS Group plc.

4. The worldwide turnover of NewsCorp for the financial year ending 30 June 2007 was €[]. NewsCorp's turnover in the State for the financial year ending 30 June 2007 was €[].
5. NGT is a wholly-owned subsidiary of National Geographic Society ("NGS"). NGS is among the world's largest non-profit scientific and educational institutions. NGS publishes the magazines *National Geographic*, *National Geographic Traveller*, *National Geographic Adventure* and *National Geographic Kids* and sponsors high profile exploratory and archaeological expeditions as well as programmes dedicated to promoting the conservation, education and exploration of the planet. NGS has also expanded its activities to include film production, television channel production, programming development and distribution, digital media, book publishing, school publishing, map publishing, educational travel tours and branded merchandising.
6. Neither NGS nor any of its subsidiaries, including NGT, have a physical presence in the State. In the State, the English-language edition of the National Geographic magazines is available via subscription and newsstands. In addition, NGS's UK distributor supplies a number of international book titles such as *Through the Lens*, *Visual History of the World* and *Traveller Guides*.
7. The worldwide turnover of NGT for the financial year ending 31 December 2006 was USD[] (approximately €[]¹). NGT's turnover in the State for the financial year ending 31 December 2006 was USD[] (approximately €[]²).

The Target

8. NGC-UK, the target, is an existing joint venture. At present, British Sky Broadcasting Group plc ("BSkyB") and NGC Network (UK) Limited each own [] of NGC-UK. NGC Network (UK) Limited's shares are held [] by NewsCorp and NGT []. As a result, NGC-UK is currently jointly controlled by NGT and BSkyB. (See Figure 1).

Figure 1: Current Ownership Structure of NGC-UK



¹ Based on the Euro-US Dollar exchange rates from the Central Bank of Ireland dated 21 November 2007 (1.4814).

² Based on the Euro-US Dollar exchange rates from the Central Bank of Ireland dated 21 November 2007 (1.4814).

9. NGC-UK compiles and distributes (at the wholesale level) the *National Geographic Channel*, the *National Geographic Wild Channel* and the *National Geographic High Definition (HD) Channel* to television broadcasting platform operators ("platform operators") in the United Kingdom, Ireland and a number of regions including the Benelux countries, Greece, Malta, the Nordic Region, Eastern Europe, South Africa, Australia and New Zealand.
10. NGC-UK offers two types of programming services to platform operators: (a) linear programme service - a programme service that makes available programming (or content) on a continuous, regularly-scheduled basis; and, (b) non-linear programme service - a programme service that makes available programming (or content) on an on-demand (or viewer determined) basis .
11. While NGC-UK's operations are based in the United Kingdom it distributes the UK and Ireland version of the *National Geographic Channel*, the *National Geographic Wild Channel* and the *National Geographic High Definition (HD) Channel* to various platform operators in the State. NGC-UK's customers in the State include BSkyB, NTL, Chorus, Casey Television, Magnet Networks Ltd., Smart, Crossan Cable, SCTV Digital, Broadworks Communications and Cablewatch Limited. The *National Geographic High Definition (HD) Channel* is only available in the State over the BSkyB platform. No other platform operators currently offer high definition services in the State.
12. NGC-UK also provides a non-linear programme service in the State to BSkyB and 4od.com.
13. The worldwide turnover of NGC-UK for the financial year ending 30 June 2007 was Stg£[] (approximately €[]³). NGC-UK's turnover in the State for the financial year ending 30 June 2007 was Stg£[] (approximately €[]⁴).

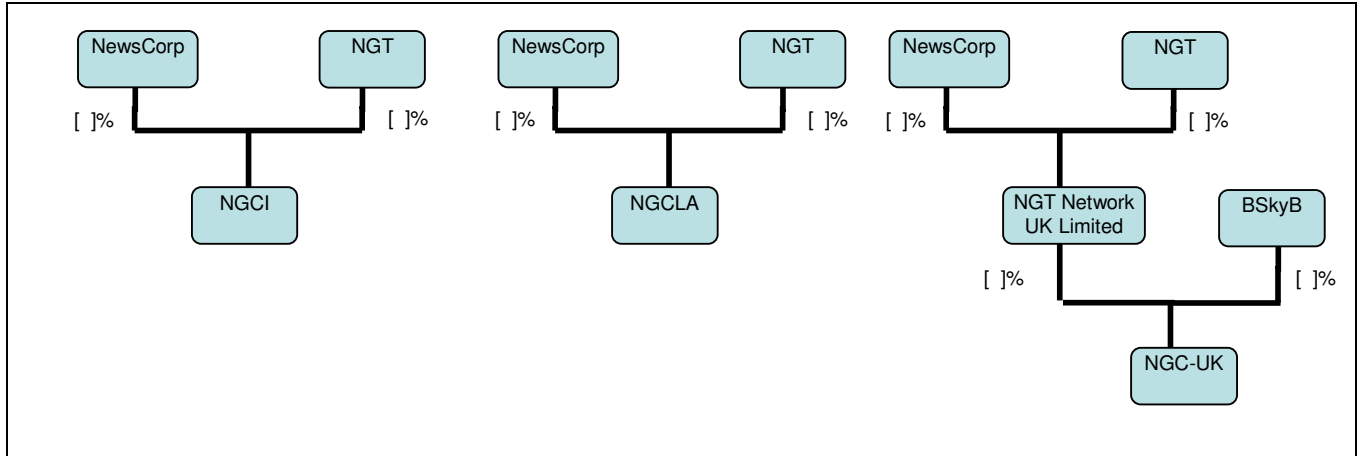
The Transaction and Rationale

14. The proposed transaction will result in the common ownership and control of three joint ventures supplying the National Geographic television channels to platform operators: NGCI, NGCLA and NGC-UK. NGCI and NGCLA operate in Latin America and internationally. NGC-UK operates in a number of regions including the United Kingdom and Ireland.
15. At present, NGCI and NGCLA are both under the joint control of NewsCorp and NGT and NGC-UK is under the joint control of NGT and BSkyB. (See Figure 2).

³ Based on the Euro-UK Pound exchange rates from the Central Bank of Ireland dated 21 November 2007 (0.7197).

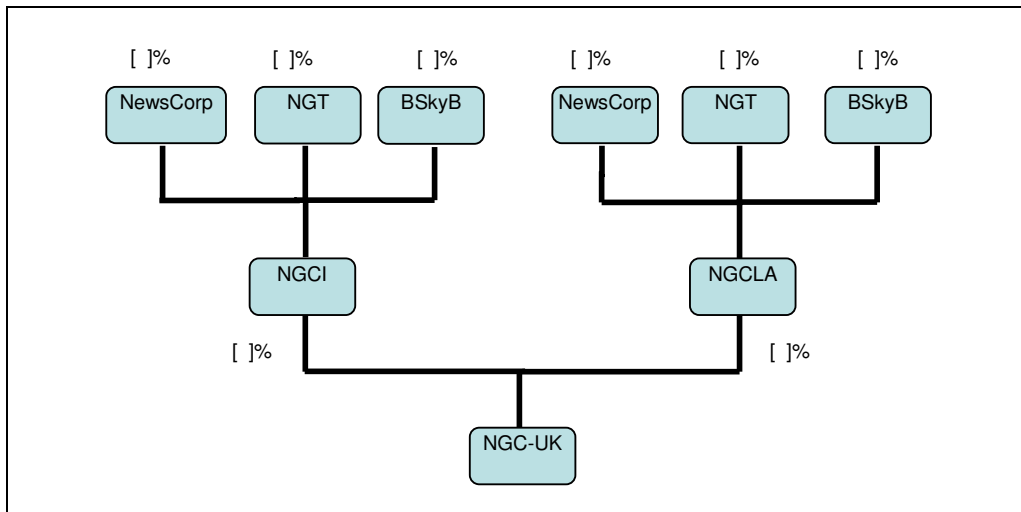
⁴ Based on the Euro-UK Pound exchange rates from the Central Bank of Ireland dated 21 November 2007 (0.7197).

Figure 2: Pre-transaction Ownership Structure of NGCI, NGCLA and NGC-UK



16. As a result of the proposed transaction, NGCI and NGCLA will together own NGC-UK and each of NGCI and NGCLA will be jointly owned by NewsCorp ([]%), NGT ([]%) and BSKyB ([]%), []. Therefore, as a result of the proposed transaction NGC-UK will be jointly controlled by NewsCorp and NGT. (See Figure 3).

Figure 3: Post-transaction Ownership Structure of NGCI, NGCLA and NGC-UK



17. The parties submitted that the rationale for the proposed transaction is to establish a common ownership structure with regard to three joint ventures currently involved in the distribution of the National Geographic channels (i.e. NGCI, NGCLA and NGC-UK).
18. As there is no change in control of the two existing joint ventures operating outside Ireland (i.e. NGCI and NGCLA), the proposed transaction has not been notified to competition authorities in other jurisdictions.

Analysis

19. Table 1 below summarises the three market sectors in the State in which the undertakings involved are active for the purpose of assessing the proposed transaction.

Table 1: Activities of the undertakings involved in the State

Undertakings Involved	Production and supply of television channels (at wholesale level)	Publishing	Print Advertising Sales
NewsCorp	√	√	√
NGT	-	√	√
NGC-UK	√	-	-

Source: Competition Authority
Note: √ means active.

Production and supply of television channels (at the wholesale level)

20. Both NewsCorp and NGC-UK supply television channels (at wholesale level) to platform operators in the State. NewsCorp provides the following channels to the BSkyB platform: FX (+2hr), Fox News, Baby TV, Star Gold, Star One, Star Plus and Star News. NGC-UK provides the *National Geographic Channel*, the *National Geographic Wild Channel* and the *National Geographic Channel HD* to cable and satellite platforms in the State.
21. However, the content of the channels offered by the parties is different. The *National Geographic Channel* and the *National Geographic Channel HD* provide a range of documentary programming related to nature, natural history, world cultures, science and exploration. The *National Geographic Wild Channel* mainly provides programming on nature and animals. The channels supplied by NewsCorp are news and entertainment based and do not contain documentary content similar to that provided on the National Geographic channels.
22. In light of the different content and target audiences of the channels provided by NewsCorp and NGC-UK, the Authority believes that there is no horizontal overlap with regard to the supply of television channels (at the wholesale level) in the State.
23. In addition to the horizontal impact of the proposed transaction the Authority examined the vertical relationship between NewsCorp and BSkyB to determine whether the proposed transaction could lead to vertical foreclosure⁵.
24. An anticompetitive effect of the transaction is only present if the merged entity has the ability and incentive to foreclose a product/service from its competitors and if this results in demonstrable harm to consumers. Two separate types of foreclosure may occur:

⁵ The conditions for vertical foreclosure were discussed at length in the Authority's recent Determination in relation to *Bord na Mona/AES*, M/07/012.

input foreclosure and customer foreclosure. In the instant case input foreclosure is relevant. This occurs where the integrated firm has market power in the upstream market and the merger is likely to raise the costs of downstream rivals by restricting their access to an important input.

Ability to foreclose

25. At present, NGC-UK supplies the National Geographic channels to a number of platform operators in the State, with BSkyB being one of its main customers. With respect to the relationship between BSkyB and NewsCorp an indirect wholly-owned subsidiary of NewsCorp (News UK Nominees Limited) holds a non-controlling shareholding of approximately 39% in BSkyB.
26. Following the implementation of the proposed transaction, NewsCorp will jointly control NGC-UK together with NGT. The Authority believes that while the proposed transaction will increase the ability of NewsCorp to foreclose the supply of the National Geographic channels to platform operators in the State, it will nevertheless require the agreement of NGT.

Incentive to foreclose

27. After the proposed transaction, NGC-UK will continue selling the National Geographic channels to the various platform operators in the State as the primary incentive for the joint venture partners (including BSkyB) is to maximise profits by ensuring that the National Geographic channels have the widest possible distribution in the State. Moreover NGC UK is currently jointly controlled by NGT and BSkyB (see Figure 1) and to date there is no evidence that BSkyB has attempted to engage in input foreclosure.
28. The Authority therefore considers that the proposed transaction does not raise competition concerns (either horizontal or vertical) in connection with the supply of television channels (at wholesale level) in the State.

Publishing

29. Both NewsCorp and NGT publish materials which are available to customers in the State. NewsCorp is engaged in publishing daily and weekly newspaper titles and distributes books through Harper Collins. NGT publishes and distributes the National Geographic magazines in the State, as well as a number of book titles such as *Through the Lens*, *Visual History of the World* and *Traveller Guides*.
30. There is therefore some horizontal overlap between NewsCorp and NGT with regard to the publication of books in the State. However, this overlap is insignificant having regard to the small volume of sales of both parties in the State. Furthermore, the fact that NGC-UK is not involved in any publishing business diminishes any risk of coordination between the joint venture partners after the implementation of the proposed transaction.
31. The Authority therefore considers that the proposed transaction, does not give rise to competition concerns in relation to the publication of books in the State.

Print Media Advertising⁶

32. NewsCorp sells advertising space to Irish advertisers through the Irish editions of its newspapers. Irish advertisers advertising in NewsCorp publications are looking to target a general readership in the State. NGT sells advertising in its National Geographic magazines at European level without being specifically targeted at Irish consumers and advertisers in the National Geographic magazines are looking to target a more pan-European readership.
33. Even if, in an individual case, an advertiser did consider the publications to be substitutes, there are numerous other publications sold in the State, both general and specialist, in which that advertising could be placed.
34. The Authority therefore considers that the proposed transaction does not raise competition concerns in relation to the sale of print advertising in the State.

Ancillary Restraints

35. The Authority also reviewed restrictive covenants included in the various agreements relevant to the proposed transaction. [These covenants include non-competition clauses with regard to the joint venture shareholders and their affiliates as long as they hold an equity interest in the joint venture].
36. The Authority believes that such restrictions are directly related and necessary to the implementation of the proposed transaction. The restrictions are necessary in order to protect the value of the goodwill generated by the joint venture to date and do not go beyond what is necessary to protect the value of this goodwill. They are limited to the services constituting the economic activity of the joint venture and are limited in geographic scope to territories in which the joint venture is active.

⁶ NGC-UK currently sells advertising for the UK and Ireland for National Geographic channels directly and through BSkyB. This will not change as a result of the proposed transaction and is not further analysed.

Determination

The Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition of joint control over NGC-UK Partnership by News Corporation and NGT Inc will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, the acquisition may be put into effect subject to the provisions of section 23(9)(a) of the Act.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority