



DETERMINATION OF MERGER NOTIFICATION M/10/027 -

Northern & Shell/CLT-UFA

Section 21 of the Competition Act 2002

Proposed acquisition by Northern & Shell Broadcasting Limited of CLT-UFA Holdings Limited

Dated 10 September 2010

Introduction

1. On 20 August 2010, in accordance with section 18 of the Competition Act 2002, the Competition Authority (the "Authority") received a notification of a proposed acquisition whereby Northern & Shell Broadcasting Limited ("Northern & Shell") would acquire sole control of CLT-UFA Holdings Limited ("CLT-UFA").

The Undertakings Involved

Northern & Shell

2. Northern & Shell is an indirect wholly-owned subsidiary of Northern & Shell Network Limited ("Northern & Shell Network"). Northern & Shell Network is the principal holding company of the Northern & Shell group of companies (the "Northern & Shell Group"). The Northern & Shell Group, which is headquartered in London, is engaged in the following activities:
 - Newspaper Publishing – the Northern & Shell Group publishes the *Daily Express*, *Sunday Express*, *International Express*, *Daily Star*, *Daily Star Sunday*, *Irish Daily Star*, and *Irish Daily Star Sunday* newspapers;
 - Printing and Distribution - the Northern & Shell Group owns a newspaper printing plant located in London as part of a 50/50 joint venture with the Telegraph Group Limited.¹ A second printing plant located at Preston is wholly-owned by the N&S Group;
 - Magazine Publishing - the Northern & Shell Group publishes *OK!*, *New!*, and *Star* magazines;
 - Television - the Northern & Shell Group carries on its television activities through Portland TV which has three principal business divisions: (a) running 17 UK broadcast channels with carriage in the UK on Sky, Freeview, Virgin and BT Vision, (b) creating and producing advertisements and music videos, and (c) providing broadcast infrastructure to third party TV channels; and,

¹ The Telegraph Group Limited publishes *The Daily Telegraph* and *The Sunday Telegraph* newspapers.

- Insurance - the Northern & Shell Group is engaged in insurance activities.
3. In the State, the Northern & Shell Group is engaged in the following activities:
- Newspaper Publishing – the UK editions of the *Daily Express* and *the Sunday Express* newspapers are sold in the State. The Northern & Shell Group, through a joint venture with Independent News and Media plc, produces the *Irish Daily Star* and *Irish Daily Star Sunday*, which are targeted at the Irish market. The Northern & Shell Group has no printing or distribution activities in the State and its newspapers are distributed in the State through a third party distributor;
 - Magazine Publishing - the UK editions of *OK!*, *New!* and *Star* magazines are sold in the State,
 - Television – Portland TV broadcasts a number of pay and non-pay adult entertainment television channels. Portland TV licenses its channels to providers of multi-channel pay-tv services in the State such as UPC and Sky, who include the channels as part of their retail product offerings. None of Portland TV’s channels are available in Ireland free-to-air or through Freesat. Portland TV does not sell advertising airtime on its channels to customers in the State.
4. For the financial year ending 31 December 2008, Northern & Shell Group’s worldwide turnover was €529 million.² Northern & Shell Group’s turnover in the State for the financial year ending 31 December 2009 was €[...].³

CLT-UFA

5. CLT-UFA is currently owned and controlled by RTL Group SA. CLT-UFA operates Five which is principally engaged in television broadcasting, through its channels Five, Fiver and Five USA. Five’s channels are licensed by the Office of Communications in the UK and its activities are targeted at the UK market.
6. Five is the fifth and final national terrestrial analogue television channel in the UK. Five’s programme offering includes news, current affairs, science and technology, history, documentary, features, lifestyle and factual entertainment, children’s programmes, sport, drama, comedy and entertainment. Five is available in the UK on analogue, DTT, satellite and cable and has close to 100% coverage.
7. In 2006, Five launched Fiver and Five USA in the UK on Freeview, Sky and Virgin Media. Fiver is a digital channel that provides pre-school shows under the “Milkshake!” brand as well as drama, films, soaps, popular factual and lifestyle shows. Five USA is a digital channel that offers drama, films, soaps, comedy and youth programming from the USA.

² Conversion rate from sterling based on average euro sterling exchange rate for 2008: €1=£0.8.

³ Conversion rate from sterling based on average euro sterling exchange rate for 2009: €1=£0.89.

8. Five does not have a broadcasting licence in the State and its channels are not targeted at the Irish market. Five's channels are not available in the State through analogue, cable, MMDS or Digital Terrestrial Television platforms. Five's channels, however, are available in the State to a limited extent through Sky's satellite multi-channel pay-tv service and through the UK's Freesat system, which is a free-to-air digital satellite television system provided in the UK but available to viewers in the State with a Freesat compatible receiver. Five's terrestrial signal can also be received in the State through spill-over from the UK in some areas bordering Northern Ireland and some coastal areas close to Wales. As a result, the coverage and reach of Five's channels in the State is very limited.
9. Five does not target advertising customers in the State and did not generate any advertising sales directly from customers based in the State in 2009.
10. For the financial year ending 31 December 2009, CLT-UFA's worldwide turnover was €[...].⁴ For the same period, CLT-UFA did not generate any turnover in the State.

Third Party Submissions

11. No submissions were received.

Analysis

12. Since neither party sells on its television channels any advertising airtime that is directed at customers in the State, there is no overlap in the sale of television advertising on non-premium content television channels in the State.
13. In its 2005 Determination in UGC (Chorus)/NTL,⁵ the Authority distinguished between the wholesale supply of premium content television channels (comprising pay-tv sports and movies channels) and the wholesale supply of non-premium content television channels (comprising national free-to-air terrestrial channels, the UK terrestrial channels and other channels offered by Sky and other Channel providers).⁶ The Authority has no reason in the present case to depart from this approach. Since the Portland TV channels and CLT-UFA's channels are non-premium content channels, the parties overlap horizontally in the wholesale supply of non-premium content television channels in the State.
14. The parties state in the notification that the estimated combined viewing share of Portland TV's channels in the State is less than 1%.⁷ The parties estimate that the combined viewing share of CLT-UFA's three channels (Five, Fiver and Five USA) in the State is also likely to

⁴ Conversion rate from sterling based on average euro sterling exchange rate for 2009: €1=£0.89.

⁵ Determination M/05/024 UGC (Chorus)/NTL.

⁶ The Authority's investigation concluded that pay-TV channels and free-to-air channels are sufficiently different that they cannot be considered to comprise a single multi-channel television market. The Authority's investigation found that they are different business models with pay-TV depending primarily on subscription revenue while free-to-air channels depend on advertising revenue and licence fees.

⁷ As of 30 June 2010, Portland TV had 4,475 subscribers to its channels in the State.

be less than 1%.⁸ On the basis of these viewing shares, the Authority considers that the proposed acquisition raises no competition concerns in the wholesale supply of non-premium content television channels in the State.

⁸ The parties can only estimate the viewing share of CLT-UFA's channels in the State since CLT-UFA does not subscribe to AGB Nielsen Media Research which is responsible for television audience measurement in the State.

DETERMINATION

The Competition 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 by Northern & Shell Broadcasting Limited of CLT-UFA Holdings Limited will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect, subject to section 23(9)(a) of the Act.

For the Competition Authority

Dr. Stanley Wong

Member of the Competition Authority