M/05/024 UGC (Chorus) / Ntl

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Determination of the Competition Authority
4th November 2005

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Proposed Acquisition by UPC Ireland B.V. of MS Irish Cable Holdings B.V.

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1. INTRODUCTION

Notification

1. On 24th May 2005, in accordance with section 18(1)(b) of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") was notified on a mandatory basis of a transaction whereby UPC Ireland B.V. would acquire MS Irish Cable Holdings B.V. for €325m. The notified transaction is herein described as "the proposed acquisition".

2. The Authority informed the undertakings involved and the Minister that it considered the proposed acquisition to be a media merger within the meaning of section 23 of the Act.

Process and Procedures

Further information request

3. On 23rd June 2005, the Authority required further information from the undertakings involved pursuant to section 20(2) of the Act. The Authority specified that the requirement be complied with by 25th July 2005. At the request of the undertakings involved, the Authority met with their representatives to clarify the scope of the section 20(2) requirement and to grant reasonable limitations on the information and documents sought.

4. With respect to the section 20(2) requirement addressed to the target, certain of the information required related to its vendor, Ntl UK. Ntl UK agreed to respond to that part of the section 20(2) requirement, which related to it. In addition Ntl UK agreed to provide, on a voluntary basis, and with certain limitations on the basis of confidentiality, information on the other bidders who sought to purchase the target.

5. On the 20th, 22nd and 25th July 2005, representatives of the target provided the Authority with information and documents sought in the section 20(2) requirement.

6. On 22nd July 2005, at the request of representatives of the acquirer, the Authority extended the period within which the information was to be provided to 28th July. On 26th July 2005, pursuant to a further such request, the Authority granted a second extension to 3rd August 2005. On 3rd August, the Authority, pursuant to another request, granted a third and final extension of the period to 8th August 2005. On 8th August, representatives of the acquirer provided the Authority with the information and documents sought in the section 20(2) requirement.

Submissions received

7. The Authority received four submissions during the course of its investigation of the proposed transaction, from:
   - a fixed line telephone and Internet services provider;
   - a cable pay-TV, telephone, and Broadband services provider;
   - a bidder and private equity fund, which made a combined offer for Ntl UK's business in Ireland; and

- a pay-TV service provider in the State.

Determination to proceed with a full investigation

8. On 1st September 2005, the Authority determined to carry out a full investigation and informed the undertakings involved.

9. The Authority published a notice on its website and in a national newspaper inviting submissions. No submissions by third parties were received by the deadline. The Mergers Division did, however, meet with three third parties after the deadline for submissions to discuss a number of concerns that the parties raised about the transaction.

The Undertakings Involved[1]

The acquirer

10. UPC Ireland B.V., the acquirer, is a special purpose vehicle incorporated for the purposes of the proposed acquisition. At the time of the notification, it was a wholly owned subsidiary of UGC Europe, Inc., which in turn was a subsidiary of UnitedGlobalCom, Inc ("UGC"). UGC was an international Broadband communications provider of video, voice and Internet services, with operations in 14 countries.

11. UGC's ultimate parent was Liberty Media International, Inc. ("LMI"), an international Broadband distribution company headquartered in Delaware, USA. In June 2005 LMI and UGC merged to form Liberty Global Inc. ("Liberty Global"). Liberty Global is the largest Broadband cable operator outside the US in terms of subscribers. At June 30, 2005, it owned and operated networks that passed[2] approximately 23.5 million homes and served approximately 10.7 million video subscribers (i.e., cable television), 2.4 million Broadband subscribers and 1.8 million telephony subscribers.

The acquirer group's activities in Ireland

12. In Ireland Liberty Global's operations are carried out through Princes Holdings Limited, which in turn owns Chorus Communications Limited ("Chorus").

13. Chorus provides cable and multipoint microwave distribution system ("MMDS") pay television ("TV") services, along with electronic communications (voice telephony and Internet) services. Its principal operations are in cable TV and it is the second largest provider of these services in the State. It offers retail analogue and digital pay-TV services for residential customers in Ireland, excluding Dublin, Galway, Waterford and some surrounding areas.

[1] Throughout this Determination the Authority uses the terms "undertakings involved" and "the parties" interchangeably. This is distinct from the term 'third parties' which relates to parties other than those directly involved in the transaction who have made submissions or met with the Authority during the course of its investigation.

[2] Homes 'passed' refers to the reach of the cable network and the number of potential homes that could be provided with services. Homes 'served' refers to the number of homes actually taking up service.

14. As of September 2004 Chorus had 669,862 homes passed, of which 222,837 were homes passed by cable and 447,025 are homes passed by MMDS. It has c.180,000 customers for MMDS and cable, of which 60,000 are digital customers. Chorus has 600 customers for Broadband and 500 customers for telephone services. For the year ended 31st December 2004 Chorus had total turnover of €66.7m.

The target

15. MS Irish Cable Holdings B.V., the target, is a wholly owned subsidiary of Morgan Stanley Dean Witter Equity Funding Inc. ("Morgan Stanley"). MS Irish Cable Holdings Limited was incorporated to purchase Ntl Irish Holdings Limited and Ntl (Chichester) Limited and certain assets from Ntl UK. These two Ntl companies plus the assets comprise what is Ntl's Irish business, all of which is now owned by the target (hereinafter "Ntl").

16. Ntl provides cable and MMDS pay-TV services, along with electronic communications services. Like Chorus it offers retail analogue and digital pay-TV services for residential customers provided over cable and MMDS networks. It is the largest provider of these services in the State.

17. Unlike Chorus, the geographical scope of its operations is mainly concentrated in Dublin, Galway and Waterford. Ntl has approximately 467,000 residential homes cabled for service. It has c. 350,000 residential cable TV and MMDS customers, of which 96,000 are digital customers. It has c. 16,000 Broadband subscribers. For the year ended 31st December 2004, Ntl generated turnover of approximately €106m.

2. THE PROPOSED ACQUISITION – BACKGROUND AND CONTEXT

Rationale for the proposed acquisition

18. The Authority understands that the rationale for Ntl UK's disposal of Ntl is that it has developed into a non-core asset following the decision to merge Ntl UK with the UK cable company Telewest Broadband.

19. From the acquirer's perspective Liberty Global plans to invest in the merged entity so that it will be capable of offering a wider range of products to Irish customers such as 'triple play' (Internet, television and telephony) and VoIP (Voice over Internet Protocol). In its "Investment Committee Materials", dated 24 March 2005, UGC referred to its rationale for the acquisition as follows:
    - *the creation of the leading pay-TV operator in Ireland;*
    - *a nationwide network using Cable TV and MMDS technologies, with 1.2 million homes passed of a total of 1.3 million Irish homes;*
    - *market growth in the pay-TV market due to the migration from analogue to digital TV;*
    - *development of Broadband and VoIP services as Ireland is expected to catch up from its position as a country with one of the lowest Broadband penetrations in Western Europe.*

Involvement of Morgan Stanley – "Warehousing"

20. In January 2005, Ntl UK invited submissions from interested bidders in the proposed sale of Ntl. Ntl UK evaluated the various bidders on a number of factors including price, certainty of funding, outstanding due diligence and regulatory risk. There were 9 original bidders and in March 2005 this was reduced to three – Setanta, UGC and Augustus – for further detailed consideration by Ntl UK.

21. Whilst the acquirer was the best on price, it was expected that there would be substantial risk of delay in the merger review process. As a means of overcoming this hurdle the undertakings involved proposed to introduce the acquirer's bankers as an intermediate purchaser. This contemplated structure involved a two step process (known as "warehousing") whereby firstly the purchaser's investment bankers, Morgan Stanley, would purchase Ntl from Ntl UK and secondly UGC would purchase Ntl from Morgan Stanley. The rationale for this was that the first step of the transaction would not pose regulatory concern, thereby enabling Ntl UK to obtain the consideration for the transaction relatively quickly.

22. The second part of the transaction, involving UGC's purchase of Ntl from Morgan Stanley would involve UGC paying a monthly fee to Morgan Stanley and compensating it for any losses which may arise from a negative outcome.

Applicability of section 16 of the Act

23. A variation of the above was subsequently proposed to the Authority. Prior to notification of the proposed acquisition representatives of the acquirer and Morgan Stanley met with the Authority and suggested that insofar as the first part of the proposed structure was concerned, a merger or

acquisition could not be deemed to have occurred by virtue of section 16(6)(d) of the Act.

24. Section 16(6)(d) of the Act states that *"where control is constituted by the undertaking's holding, on a temporary basis, securities acquired in another undertaking and any exercise by the undertaking of voting rights in respect of those securities, whilst that control subsists, is for the purpose of arranging for the disposal, within the specified period, of all or part of the other undertaking or its assets or securities and not for the purpose of determining the manner in which any activities of the other undertaking, being activities that could affect competition in markets for goods or services in the State",* then *"a merger or acquisition shall not be deemed to occur".* The Authority accepted that on its face the first part of the contemplated structure came within the ambit of this provision.

25. The first part of the contemplated structure, consequently, did not require notification to the Authority. An objection was raised that the first part of the proposed transaction did amount to a merger or acquisition, since section 16(6)(d) only applied where there was an acquisition of securities, not assets. Having analysed Morgan Stanley's written response and having looked at the nature of the assets involved, the Authority came to the view that the section did apply, since control, within the meaning of the Act, was acquired by virtue of the acquisition of shares alone and was not dependent on acquiring the assets also.

Gun jumping

26. As part of its section 20(2) requirement for information, the Authority requested that the undertakings involved identify all co-operative actions in relation to the proposed acquisition. The undertakings provided details of meetings and the involvement of their legal representatives at these meetings. On the basis of this and other documentary evidence, the Authority is satisfied that no prior implementation of the proposed transaction has occurred.

27. Furthermore, while some reports in the press alleged that "gun jumping" might be present in this transaction, the Authority found no basis for these claims.

3. EVOLUTION OF CABLE INFRASTRUCTURE AND SERVICES IN IRELAND

History of cable in the State

28. Cable services in Ireland commenced in the late 1960s when the State broadcaster RTE began a service called RTE Relays, initially located in Dublin, which rebroadcast the UK's three terrestrial TV channels. This service subsequently developed into:

- Cablelink (formed from the merger of RTE Relays, Phoenix Relays, and Marlin Cable/Dublin Cable Systems in 1986);
- Cablelink Galway (formerly Galway Cablevision); and
- Cablelink Waterford (formerly Waterford Cablevision).

29. In 1990, Telecom Eireann (now eircom) acquired a stake in Cablelink. In 1999, Cablelink was sold to Ntl UK for IR£650m and was renamed Ntl.

30. Princes Holdings Limited ("PHL"), the parent company of Chorus, was established in the 1980s by Independent News and Media plc. PHL subsequently acquired regional cable TV companies such as Horizon TV, Independent Wireless Cable ("IWC") and Cork Communications. In the early 1990s PHL obtained the majority of the MMDS licences in the country and operated this part of the business as Irish Multichannel. During the 1990s TeleCommunications Inc. ("TCI"), the predecessor to what is now Liberty Global, acquired a 50% stake in PHL. In 1999 the trading name of the multichannel and MMDS business of PHL was changed to Chorus Communications. In March 2004, LMC (TCI's successor) acquired sole control of PHL. LMC was subsequently spun off and a new publicly-traded company LMI was formed, which became the 100% owner of PHL. In December 2004 UGC Europe acquired PHL from LMI.

Description of the infrastructure[3]

Cable Transmission

31. Cable is a system of providing TV, FM radio programming and other services (including telecommunications services) to consumers via radio frequency signals transmitted directly to consumer's televisions/homes through fixed optical fibres or coaxial cables.

[3] Other infrastructure platforms used to provide services that compete with cable include: (i) **Direct-to–the-Home/Satellite Transmission -** BSkyB is the only provider of Direct-to-the-Home (DTH)/Satellite multi-channel pay-TV services in Ireland. Reception of these services requires a Sky mini dish aligned to the Astra Satellite, a set-top box and a standard TV. The DTH platform is capable of transmitting over 200 separate TV and audio channels; (ii) **Fibre-to The-Home Networks (FTTH) -** Fibre To The Home (FTTH) involves fibre terminating at a residence and originating at a switching facility, either a concentrator, remote or central office. Magnet Networks is the only provider of multi-channel pay-TV over a hybrid of broadband Asymmetric Digital Subscriber Line (ADSL) and FTTH in Ireland. Reception of this service requires connection to the local loop or backbone telecommunications network, a separate modem for ADSL and FTTH as well as a standard TV.

32. Cable TV (which is the original application developed for cable transmission) specifically involves distributing a number of television channels collected at a central location (called a head-end) to subscribers by means of a network of optical fibres and/or coaxial cables. Traditionally cabled TV systems worked strictly by way of analogue signals but more modern cable TV systems also employ the use of digital cable technology, which uses compressed digital signals, allowing the provision of many more channels than could be provided with analogue alone.

Wireless cable / MMDS Transmission

33. Wireless cable or Multipoint Microwave Distribution System (MMDS) is used as an alternative method of cable TV reception in sparsely populated rural areas where laying cables is not economically viable. This system involves the transmission of pictures and sound at microwave frequencies (2.5 GHz). A roof-top antenna receives and converts the signals to TV banks and sends them to a Set Top Box ("STB") to decode the programmes.[4]

Sector regulation

34. The Commission for Communications Regulation ("ComReg") is the regulator of the electronic communications sector (telecommunications, radio-communications and broadcasting transmission). The Broadcasting Commission of Ireland ("BCI") licenses and regulates independent broadcasters. The RTÉ Authority is a statutory body which regulates RTÉ's activities.

35. Prior to March 2002 cable companies in Ireland were licensed by the Office of the Director of Telecommunications Regulation ("ODTR"), the forerunner of ComReg. The cable and MMDS licences issued under the Wireless Telegraphy (Programme Services Distribution) Regulations, 1999 (S.I. No. 73 of 1999), granted limited exclusivity to the licensee for the delivery of Licensed Programme Services over Cable/MMDS or any equivalent system, until April 2004.

36. However on 1st March 2002, the in-platform exclusivity enjoyed by the three licensees (Ntl, Chorus and Casey Cablevision) was terminated. Broadcasting transmission services are now regulated through the provision of the new EU Regulatory Framework for electronic communications.

37. MMDS provision remains regulated, with licenses granted to Ntl and Chorus until 2012 and 2014 respectively. Part of the licence conditions includes an obligation for roll-out of the digital signal. Chorus has not met this obligation (currently 80% and 100% expected by end of 2005). In 2004 ComReg introduced a scheme to licence MMDS at 12 GHz. This is the band also used to deliver satellite television programmes Direct-to-the-Home ("DTH"). ComReg has issued one licence at 12 GHz to Southcoast Television which will cover most of Munster.

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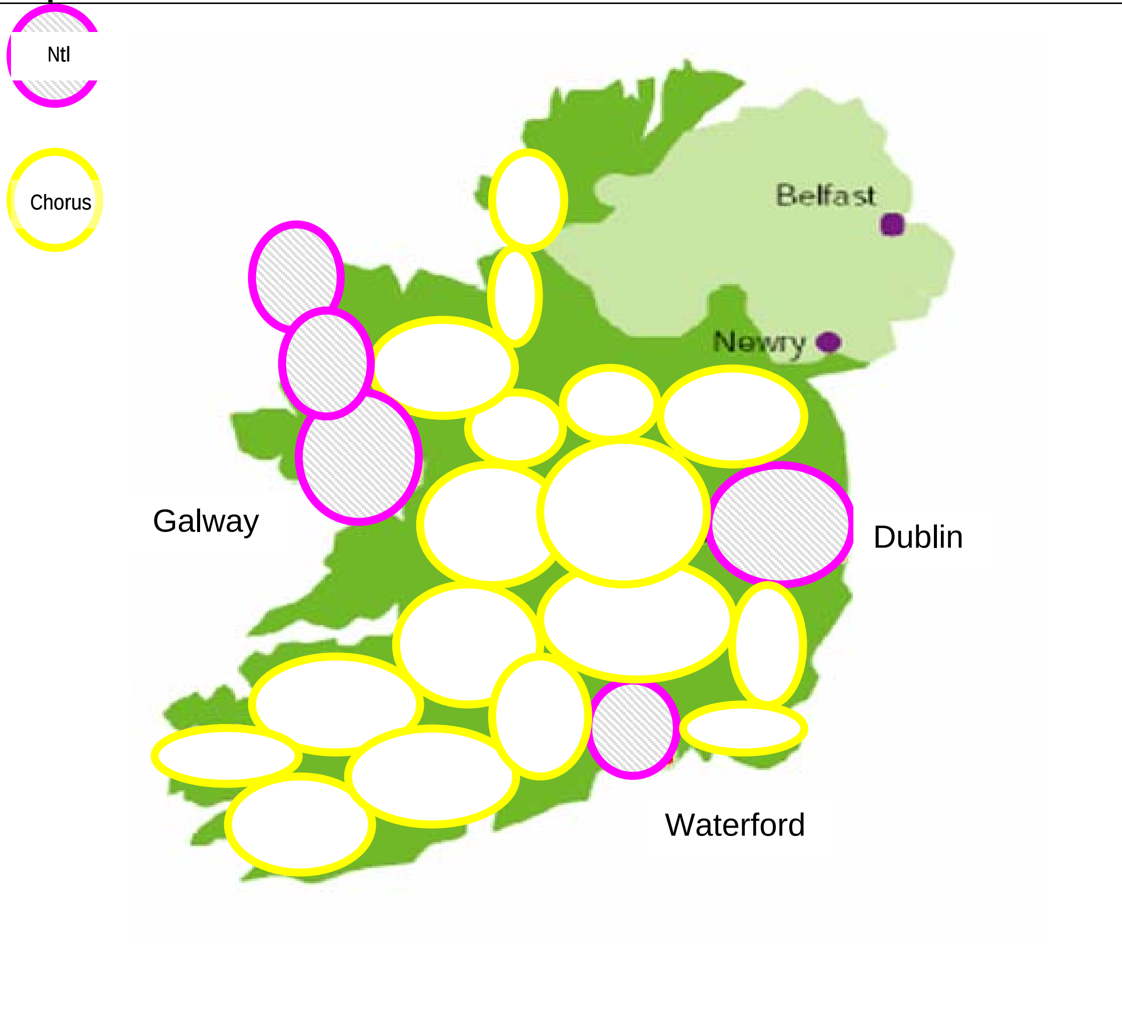
[4] The 2.5 GHz band has been identified by the Commission for Communications Regulation (ComReg) as the main expansion band for 3G services from 2008.

Physical overlap of Chorus and Ntl cable/MMDS networks

38. Figure 1 compares the regions in which Chorus and Ntl currently operate. Following on from the regional exclusivity conferred on the cable companies in the past, Chorus and Ntl, in common with other European cable companies, have not engaged in any 'over build' on each others networks. Thus the regions in which both offer services are distinct.[5]

39. Ntl holds the cable television licences for the cities of Dublin, Galway and Waterford (with the Dublin licence also covering Leixlip, County Kildare, Dunboyne, County Meath, and Bray). It also holds MMDS franchises for cells covering the above counties, in addition to County Mayo. Chorus owns cable television and MMDS licences for most of the other towns in the State.

Figure 1 Regions Served by Chorus and Ntl Main Areas of Operation in the Republic of Ireland



Source: The Competition Authority

[5] There is a minor overlap between Chorus and Ntl consisting of approximately 1,000 customers.

4. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

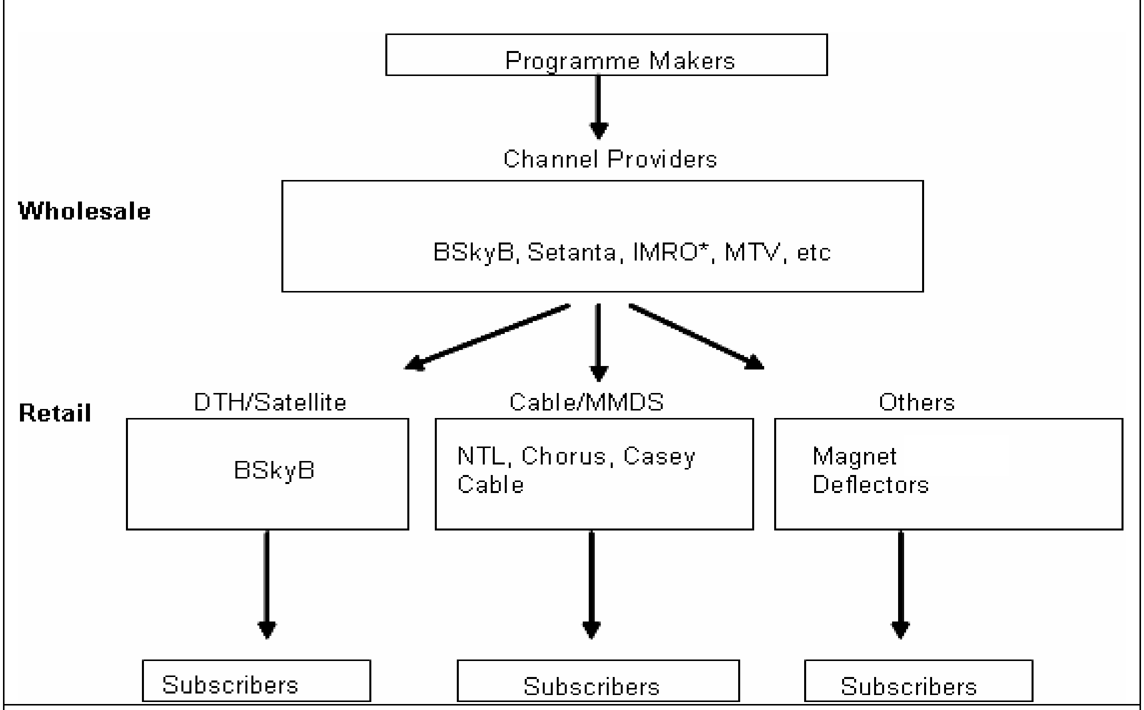
Product markets

40. The parties proposed that the evaluation of competition in the proposed acquisition should be assessed in the context of two separate product markets: a) multi-channel TV retail market; and b) telephony and Internet related services.

41. The parties submitted that the multi-channel TV retail market includes both pay-TV and free-to-air TV, that is, TV services offered by satellite (pay-TV and free-to-air digital satellite services – "freesat"), cable, MMDS, small fibre to home networks, and deflectors to Irish TV-homes. Additionally, the parties proposed that the market should include Irish TV-homes that can access the Northern Ireland or Wales based UK free-to-air terrestrial networks but exclude those Irish TV-homes that are limited to the Irish free-to-air terrestrial network. Furthermore, the undertakings involved identified additional technologies, such as Digital Terrestrial Television (DTT), 3G, digital MMDS on 12 GHz frequency band, and TV over DSL, as providing potential future competition in the proposed relevant market.

42. The Authority considers that the business activities of the undertakings involved overlap in three product markets, namely:
    - the procurement of content (channels) for multi-channel pay-TV services (see Figure 2);
    - the provision of multi-channel pay-TV services (see Figure 2); and
    - the provision of telephony and related Internet services.

Figure 2 An Illustration of the Irish Pay-TV Supply Chain



* Irish Music Rights Organisation
Source: The Competition Authority, adapted from The UK Competition Commission

Wholesale content and telephony/Internet provision

43. Figure 2 above illustrates that in addition to a retail pay-TV market (considered in detail below) the activities of the undertakings involved also overlap in the upstream market for procurement of content (channels). The Authority is of the view that this constitutes a separate market for the evaluation of competition in this case and that it can be further segmented into:
    - a premium content market comprising sports and movies content: BSkyB is the principal supplier of premium content to retailers in the Irish-pay-TV market;
    - a non-premium content market comprising all the 'must-carry' national free-to-air terrestrial channels; and
    - a non-premium content market comprising the UK terrestrial channels and other channels offered by BSkyB and other Channel providers.

44. Internal documents of the parties indicate that each of Ntl and Chorus is active in the provision of Internet services, high-speed data, and voice telephony, albeit to a limited extent. These documents further show that high-speed data is one of the key areas for upgrade and expansion envisioned by the acquirer and that this forms a central rationale for the acquirer's wish to merge with the target company.

45. This view is supported by the submissions from a number of third parties and confirms the Authority's view that this is a separate market for the evaluation of competition in the proposed acquisition.

Retail Pay-TV Market

46. Figure 2 illustrates the existence of a retail pay-TV market. The market investigation carried out by the Authority has established that freeview, which includes free-to-air and freesat, is clearly separate from pay-TV services and that the two cannot be combined to form a single retail multi-channel TV market. In establishing the relevant markets, the Authority considered previous decisions, the views of third parties, including content suppliers, and the parties' internal documents.

Previous Decisions

47. Previous decisions of the European Commission ("the Commission") and the UK Competition Commission ("the Competition Commission") consistently support a finding of a pay-TV services market that is separate from free-to-air TV services.

NewsCorp/Telepiu

48. In *NewsCorp/Telepiu*[6], concerning the acquisition by News Corporation plc of the Italian pay-TV providers (Telepiu S.p.A. and Stream S.p.A.) resulting in the creation of a single Direct-to-the-Home satellite pay-TV platform, the Commission considered separate downstream pay-TV and upstream pay-TV content markets. The Commission found that although there exists a dynamic interplay between free-to-air and pay-TV, which has an influence on the penetration and success of pay-TV in Italy, the two

[6] Commission Decision of 02 April 2003, Case no. Comp/M.2876-NewsCorp/Telepiu.

TV services constitute separate markets. This conclusion was consistent with the Commission's findings in previous cases in the sector.

49. The Commission found that the type of content and the programme schedules offered by pay-TV operators are different to those available on free-to-air. Additionally, the business models of the two services are different. Free-to-air TV broadcasters rely on revenue generated from advertising and State funding whereas pay-TV operators rely primarily on revenues generated from subscription fees.

50. The Commission also considered additional elements relating to the consumption of the two services that also favoured a distinction between pay-TV and free-TV services. For example pay-TV offers Electronic Programming Guides (EPGs) while free-TV services do not.

51. In connection with the upstream pay-TV content market, the Commission found that from a demand perspective, TV content providers are not substitutable, they are instead complementary. From a supply perspective, suppliers of specific content are not able to switch production between different types of content without a serious risk of revenue loss.

52. The Commission found that although, theoretically, free-to-air TV and pay-TV compete for the acquisition of the TV content, some of that content is acquired only by pay-TV providers, due to (a) pricing and contract terms and (b) the specific capacity to broadcast those events, (e.g., the capacity to broadcast several matches at the same time).

Ntl/Cable & Wireless Communications

53. In its analysis of the acquisition by Ntl of Cable & Wireless Communications[7], the Competition Commission established that pay-TV is distinct from free-to-air TV. The Competition Commission recognised that there is an interaction between the two TV services and that the presence of free-to-air operators will place some limit on the prices charged by pay-TV but concluded that there is a distinct pay-TV market.

54. The Competition Commission took the view that pay-TV with its particular emphasis on film and sport is clearly different from free-to-air TV. Consistent with the findings of other agencies, it found that the two TV services are financed differently.

55. The Competition Commission considered whether the pay-TV market could be widened to include telephony and interactive services. While it recognised convergence in the means of delivery, it took the view that pay-TV and telephony services are in separate markets.

Third parties' views

56. The majority of submissions received by the Authority proposed that the appropriate retail market is the market for pay-TV services, regardless of the transmission platform. One submission proposed that the relevant market is the provision of cable only pay-TV. The majority of submissions proposed that the Authority should follow the product market definitions

[7] Ntl Incorporated and Cable & Wireless Communications Plc: A report on the proposed acquisition, Competition Commission, March 2000.

adopted by the European Commission and other Member States arguing that there is no demand or supply substitutability between pay-TV and free-to-air TV. In each of the submissions received from third parties pay-TV is distinguished from free-to-air in terms of funding, content and programming.

The parties' internal documents

57. A review of each of Ntl and Chorus' internal documents, namely, market surveys, market forecasts, business plans and pricing plans clearly indicate that each considered that they offer a TV service that is appropriately captured in the pay-TV market.

58. Furthermore each of Ntl and Chorus consider BSkyB to be their main competitor in the pay-TV market. Both Ntl and Chorus monitor the programme offerings and prices charged by BSkyB and provide programme offerings similar to those offered by BSkyB. Although the parties have considered the likely constraint that 'freeview', (i.e., 'free-to-air' and 'freesat') might place on their business, they consider BSkyB as their principal competitor. For example, Chorus' internal documents indicate that dissatisfied customers switched to BSkyB.

Authority's view on the relevant retail TV product market

59. The Authority is of the view that previous decisions, in addition to the structure of the market in Ireland, support a finding of a retail pay-TV market that is clearly separate from free-view.

60. The Authority's investigation has shown that the retail free-to-air and pay-TV markets are sufficiently different that they cannot be considered to comprise a single retail multi-channel TV market. These differences arise because of the different underlying characteristics including:
    - Different business models: Free-to air TV depends on advertising revenue and licence fees while pay-TV depends primarily on subscription revenue;
    - Content providers treat two markets separately in terms of pricing and staggering the release of content. This is reflected in the different trade relationships in each case (i.e., in free-to-air the primary relationship is between supplier and advertisers, while in pay-TV suppliers have relationships with subscribers);
    - 'Must have' premium content (premium movies and premium sports) is only available on pay-TV;
    - The packaging and scheduling of programming and channels are different between the two. The pay-TV operators, for example, provide their offerings with an Electronic Programming Guide (EPG) format while free-to-air TV providers provide their offerings with limited or no EPG.

61. Unlike other European countries, Ireland is in a unique position in that a multi-channel TV service of national interest is only readily available in the pay-TV market: 73% of Irish TV homes subscribe to pay-TV to avail of multi-channel TV, as there is currently no DTT and 'freesat' is at its introductory stage in Ireland.

62. In relation to potential competition from other technologies, analysis of the current Irish situation does not support a finding that TV over DSL and

DTT would be deployed in reasonable time and/or coverage to provide credible effective competition to cable and satellite in the pay-TV market.

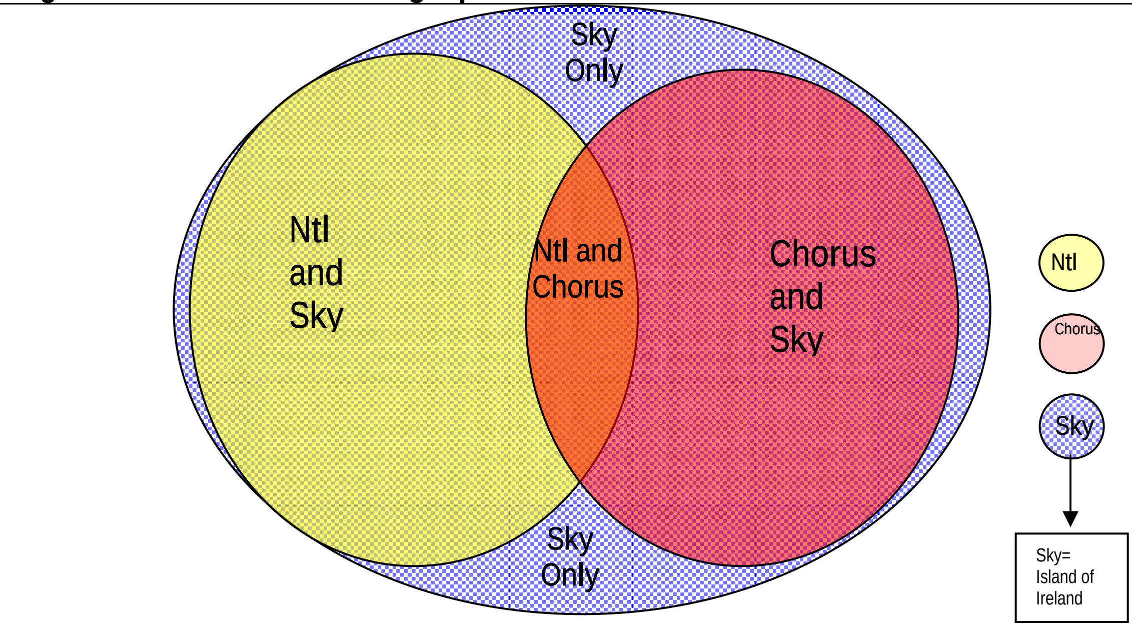
63. The Authority considered whether there is a pay-TV market distinguishable by mode of transmission. The market situation in Ireland demonstrates elements that support a finding of a pay-TV market that comprises cable, satellite, and Fibre-to-the-Home broadcasting modes. There is evidence of switching from cable to satellite and vice versa. All of the operators in the pay-TV market offer similar content and pricing, especially, for their digital services. Additionally, cable operators compete directly with Fibre-to-the-Home operators for the provision of pay-TV services to new developments. For example, Ntl actively competes with new small operators, such as Magnet, for the provision of pay-TV services in new developments.

Geographic market

64. The parties submitted that the geographic market should be considered as both national and regional in character. They argue that while BSkyB operates on a national basis and has a national pricing policy, Chorus and Ntl operate regional cable pricing and content policies. Also, Chorus and Ntl offer different prices for cable and MMDS. The parties submit, *"...it would be inappropriate to determine the geographic market as being national, especially given the non-overlap between the cable and MMDS platforms and the effective non-overlap within platform."*

65. The Authority is of the view that the geographic market for the three product markets identified can be assessed as both regional and national in scope (see Figure 3 which illustrates this for the retail pay-TV market). Currently, there are two separate regional markets with each of Ntl and Chorus competing regionally with BSkyB for wholesale content and retail pay-TV, and two separate regional markets where each compete with eircom (and other providers of telephony related and Broadband services). Post consummation of the acquisition there will be a national two player market in wholesale content and retail pay-TV with the merged entity competing with BSkyB, which offers a national pricing structure and national channel packaging. The merged entity will also compete nationally with other providers of telephony services and Broadband access.

Figure 3 The Relevant Geographical Market



Source: The Competition Authority

66. While there is support for the view that the pay-TV services market can be regarded as national in scope the Authority believes that in this case pre-merger prices are set at a regional level by both Ntl and Chorus, independently of each other. Thus, the Authority's view is that while the identified markets are national the analysis of the effect of the proposed acquisition on each region should be taken into account.[8]

[8] The view that there is a national market is supported by both the Commission and the Competition Commission. The Commission found that both the downstream retail pay-TV and the upstream pay-TV content markets are national in scope, as television broadcasting is still generally organised on a national basis and the vast majority of rights acquired are limited to a specific country or territory. Similarly, the Competition Commission found that although the parties operated in separate local franchises, the main characteristics of the pay-TV market indicate a national geographic market. For example, BSkyB operates a national pricing structure both at the retail (retail pay-TV) and wholesale (content) levels of the market. The undertakings involved also offer uniform pricing across their local franchises and the bulk of their programme offerings are of national rather than local interest.

5. ANALYSIS OF THE PRODUCT MARKETS

TV Services offered by Chorus and Ntl

67. Table 1 below compares the pay-TV product offerings of each of Ntl and Chorus, and specifically their respective entry level TV packages and digital TV packages. BSkyB's product offerings are also provided for comparison.

Table 1 Comparison of Product Offerings from Ntl, Chorus and BSkyB			
	Ntl	**Chorus**	**BSkyB**
Services offered by the parties:			
Cable TV (& MMDS)	√	√	-
Digital TV		√	√
Telephony	-[9]	√	-
Internet Broadband	√	√	-
	Ntl	**Chorus**	**BSkyB**
Basic TV Package rate per month	€19.50 (analogue)	€22.99-26.99(analogue)	Sky Value Pack €20.00[10]
Set top-box	N/A	N/A	√
RTE1	√	√	-
RTE2	√	√	-
TV3	√	√	-
TG4	√	√	-
BBC1	√	√	√
BBC2	√	√	√
UTV	√	√	-
Channel 4	√	√	-
Sky news	√	√	√
Sky one	√	√	√
MTV	√	√	-
E4	√	√	-
Nickelodeon	√	-	-
Setanta	√	-	-
CNBC	√	-	-
Discovery	√	-	√
TMF	√	-	-
At the races	-	√	-
Cartoon network	-	√	-
Eurosport	-	√	-
QVC	-	-	√
Bloomberg	-	-	√
BBC3	-	-	√
BBC4	-	-	√
	Ntl	**Chorus**	**BskyB**
Comparable digital pack rate	€24.50-€29.50	€29.50	€28.50
Channels	Over 100 basic	Over 60 basic channels	Over 100 basic channels
Basic pack includes	Setanta UTV Channel 4 MGM movies	UTV Channel 4 Includes Eurosport	Eurosport Does not include UTV & Channel 4
Add-ons	Digital Basic + Sports + Movies = €63.00	Digital Basic + Sports + Movies =€59.99	Digital Basic + Sports + Movies = €62.50. Various combinations
PPV movies	Yes	Yes	Yes
Source: The Competition Authority			

[9] In the past Ntl offered telephony services to some of its customers. These were withdrawn after technical problems.

[10] Less than 3% of Sky customers are "Value Pack" customers.

68. In Ireland both Chorus and Ntl provide cable pay-TV (analogue and digital), voice telephony and data services (including hi-speed Internet access products). More specifically, in the provision of pay-TV services, both Ntl and Chorus (while not competing directly with each other) compete with the only Direct-to-the-Home satellite provider of pay-TV services in Ireland, BSkyB.[11]

Chorus' products and services

69. Chorus is active in the TV, Broadband and telephony markets with three main packages:
    - Chorus Digital TV (Cable & MMDS)
    - Cablenet Broadband
    - Chorus Phone

70. Chorus offers both analogue and digital TV. The Chorus analogue pack offers 8-15 basic channels including UTV, BBC, Sky One and Sky News. The Chorus digital pack combines over 60 channels.

71. Cablenet Broadband provides full Broadband Internet access and is delivered over the Chorus cable network. Currently, when customers sign up to Cablenet Broadband they receive free connection and 2 months free Internet access.

72. Chorus phone is a basic telephony package with no connection fee that also allows customers to keep their original landline numbers.

73. In addition, Chorus offers bundled packages of the various products outlined above. The digital TV package allows customers to take Chorus digital and Chorus phone, providing free digital connection and over 3 hours of calls free every month to anywhere in Ireland. Customers can also bundle their TV and Cablenet Broadband packages - when purchased together the customer receives free connection and a reduced rate of €29.95 for the Cablenet Broadband service. A similar package is offered when customers bundle Cablenet Broadband and Chorus telephone.

Ntl's products and services

74. Ntl is active in the TV, Internet and telephony markets offering separate "Home" packages and "Business" packages.

75. The "Home" package consists of digital TV, Basic TV and Broadband services. The Basic TV package has up to 18 channels including BBC, UTV, the Discovery channel, MTV and Paramount comedy. All customers wishing to upgrade to digital TV must first be Ntl basic TV customers.

76. The Ntl "Go digital pack" offers digital TV with up to 100 channels to both cable and MMDS customers. Cable customers upgrading to the "go digital pack" have the possibility to add on sports and movies and other extra channels.

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[11] BSkyB are only active in the digital pay-TV market in Ireland. BSkyB have recently launched a new range of digital packages. In their digital pack they offer a range of "Entertainment mixes"- there are 6 mixes on offer, Variety mix, Kids mix, Knowledge mix, Music mix, Style and culture mix and the News & Events mix. Customers can then choose 2 mixes from €21.50 per month, 4 mixes for €26 per month or 6 mixes for €30.50.

77. Similar to Chorus, Ntl offers MMDS in areas beyond the reach of cable TV. MMDS digital also offers greater channel choice than basic MMDS.

78. Ntl Broadband provides for a high speed Internet connection. Ntl also provides additional services to business including LAN extension services, data services, leased lines and voice services.

Market characteristics in the relevant markets

Pay-TV content supply

79. This market consists of providers of channels to the cable operators. These providers are split into 'must carry', 'must haves' and additional optional channels i.e., not part of basic packages such that customers pay extra to have these channels.

80. In an Irish context, RTE 1, Network 2, TV3 and TG4 are by law 'must carry' channels for all cable providers[12]. BSkyB is not regulated in Ireland and therefore has no obligation to carry these 'must carry' channels. However, from a commercial perspective these are among the most watched channels in Ireland (see Table 2) and are thus regarded as 'must have' channels for market development by BSkyB.

Table 2 Channel Share of Viewing by Adults 2004		
Channel	**All times (%)**	**18.00-23.29(%)**
RTE 1	27.7	33.8
Network 2	11.4	11.2
TV3	14	13.8
TG4	3.1	2.7
BBC1	6.9	6.3
BBC2	4	3.3
UTV	6.7	7.8
Channel4	4.4	3.9
E4	1.4	1.1
Sky 1	2.9	2.7
Sky News	1.7	0.9
Sky Sports 1	1.1	0.9
Sky Sports 2	0.6	0.6
MTV	1.1	0.8
Nickelodeon	0.7	0.3
All other TV	12.3	9.9
Total	100	100
Source: Medialive		

81. 'Must have' channels refer to those channels that are required from a commercial perspective, i.e., to attract both subscriber and advertiser revenues. These can be further divided into 'must have non-premium' which include the four terrestrial UK channels (BBC1, BBC2, UTV and Channel4) and stations such as MTV and Sky One, and 'must have premium' content such as Sky Movies and Sky Sports.

[12] Radio and Television Act, 1988.

82. Fees for these channels are negotiated directly with the respective wholesale provider. For example, as Table 3 below shows, the cable pay-TV providers negotiate directly with content providers such as MTV, Flextech and BSkyB. In contrast, the Irish Music Rights Organisation ("IMRO") represents the 'must have' UK terrestrial channels.

83. Optional/extra channels (such as, Turner Classic Movies, QVC, Eurosport, At the races, E4, Setanta Sports, MGM movies and National Geographic) are desirable but not essential.

Table 3 Prices Paid to Channel Wholesalers by Ntl and Chorus			
Channel	**Ntl pay per subscriber per month (cent)**	**Chorus pay per subscriber per month (cent)**	**Who is paid**
RTE 1, Network 2, TV3, TG4[13]	N/A	N/A	N/A
Sky One, Sky News	[ ]	[ ]	BskyB
Nickelodeon	[ ]	[ ]	Sky Co Venture
MTV	[ ]	[ ]	MTV
Discovery	[ ]	[ ]	Discovery
Sky Sports 1	[ ]	[ ]	BskyB
Sky movies 1[14]	[ ]	[ ]	BskyB
Sky movies 2	[ ]	[ ]	BskyB
Dual movies	[ ]	[ ]	BskyB
Paramount	[ ]	[ ]	Sky Co Venture
Playboy	[ ]	[ ]	Playboy
Setanta sports	[ ]	[ ]	Setanta
UK Gold	[ ]	[ ]	Flextech[15]
Source: The Competition Authority			

84. Table 3 shows that BSkyB, which is also a competitor of both Chorus and Ntl in the retail pay-TV market, is the wholesale provider of key "must have premium" content, namely, Sky Movies and Sky Sports. Moreover, BSkyB has the rights for the distribution, in the UK and Ireland, of six of the major Hollywood movie production studios and the rights for the distribution within the same geographic area of key sports content, e.g., Premiership football.

Structure of the Retail Pay-TV Market

85. There are approximately 1.35 million Irish TV homes, of which approximately 73% subscribe to pay-TV. Collectively Ntl and Chorus account for over 98% of all cable TV subscribers in Ireland. Ntl and Chorus are the only operators of MMDS networks in Ireland.

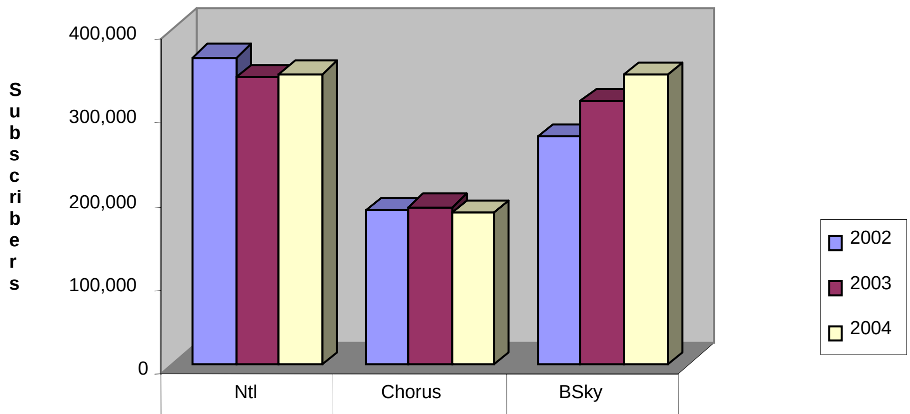
[13] Required by law to be retransmitted. No fees are negotiated.

[14] Ntl purchase Sky Sports and Sky movies in a combined package for €18.25.

[15] Flextech operates 10 channels including Bravo, Living TV and UKTV (along with BBC). Flextech is owned by Telewest (recently merged with Ntl). First round bids for Flextech were submitted in September 2005 with a number of firms interested including ITV, Channel4, RTL, Time Warner and Liberty Media. ITV, Channel 4 and Hallmark were knocked out in the first round of bids in September 18th 2005.

86. Figure 4 below illustrates the structure of the Irish retail pay-TV market. At the end of 2004, Ntl and Chorus had approximately 348,000 and 182,000 subscribers, respectively, while BSkyB had 347,000 subscribers. On a national level this translates to market shares of 39.6%, 20.7% and 39.5%, respectively, for Ntl, Chorus and BSkyB.

Figure 4 National Subscriptions, Ntl, Chorus and BSkyB, 2002 to 2004[16]



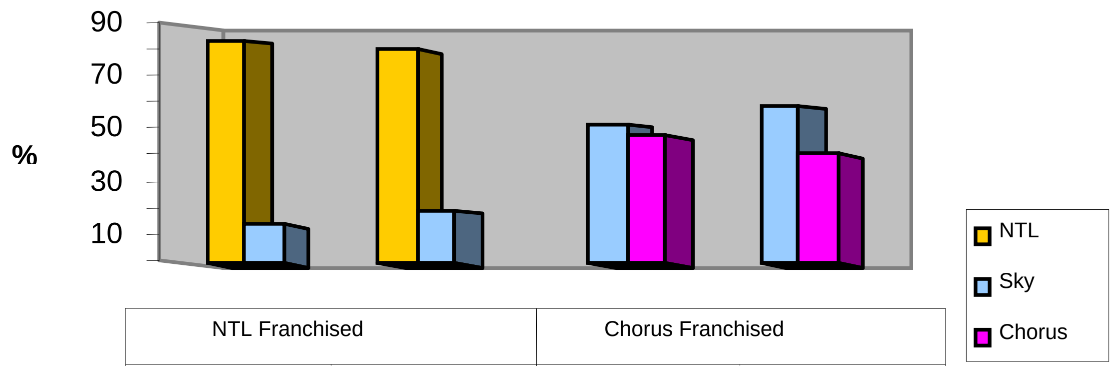
	Ntl	Chorus	BSky
2002	368,000	184,000	272,000
2003	344,300	188,700	315,000
2004	347,800	182,216	347,000

Source: The Competition Authority

87. While BSkyB increased its market share between 2002 and 2004 at the expense of both Ntl and Chorus, Figure 5 demonstrates clearly that BSkyB's gain in market share was due more to Chorus' decline vis-à-vis Ntl; BSkyB gained 13% of its market from Chorus and approximately 3.9% from Ntl. This indicates that Ntl continues to compete more effectively with BSkyB.

[16] In 2003, Ntl undertook a massive disconnection campaign against debtors. This explains the sharp decline in the Ntl's subscriber base.

Figure 5 Regional Market Shares of Ntl, Chorus and BSkyB, 2002 and 2004



	NTL Franchised		Chorus Franchised	
	2002	2004	2002	2004
NTL	83.5	80.2		
Sky	14.4	19.7	52.0	58.9
Chorus			47.9	41.0

Source: The Competition Authority

Product packaging and pricing

88. An analysis of the pricing decisions undertaken by the parties revealed that while Chorus and Ntl are aware of each other's pricing, they do not compete directly. However, both Chorus and Ntl compete directly with BSkyB and their pricing decisions reflect the BSkyB retail and wholesale prices.

89. The Authority's investigation of the pricing decisions of BSkyB revealed that they are determined, to a large extent, independently of the market situation in Ireland, [ ].

90. Aside from pricing, Ntl has adopted a strategy which appears to have allowed it to compete effectively against BSkyB. This strategy includes:

- <u>Differentiated product offering:</u> As Table 1 above demonstrates, there is a considerable difference in the channels included by each provider as part of its entry package. Ntl's basic pack includes Setanta sports while BSkyB offers this channel "*a la carte*" (i.e., as an optional extra for an additional charge). This has proved successful for Ntl since Setanta has the rights to various Premiership games and Heineken Cup rugby games;
- <u>Additional 'must have' channels:</u> Ntl's entry package contains key channels like UTV, and Channel 4 that are not currently available in any of the BSkyB packages;
- <u>Unbundled offering:</u> Ntl offers premium content on an unbundled basis – in effect attempting to break down the channels into different packages which suit different customer tastes. BSkyB has responded to this with an unbundled strategy of its own;
- <u>Multi-room viewing:</u> Ntl offers multi-room viewing for an extra €5 per month. This allows customers to watch digital TV in one room and

any of the 17 channels from the Basic TV pack in another. A similar facility is offered by BSkyB at €15 per month;

- No requirement for a satellite dish: The provision of Ntl's services without the need for the installation of satellite or mini dish is a key advantage over BSkyB in urban areas where local authorities and property developers may place restrictions on the erection of satellite dishes;
- Set top box maintenance: The retention by Ntl of ownership of its set-top boxes and the corresponding provision of set-top box maintenance services is in direct contrast to BskyB, whose subscribers own the set-top box and, after the first year, are solely responsible for its maintenance;
- Movie channels: Ntl also has the rights to MGM movies. However, these are somewhat less contemporary than those shown Sky Movies, and therefore, would not be regarded as a direct substitute for Sky Movies; and
- Bundled telephony services: Ntl also has the ability to bundle Broadband Internet access with certain of their retail pay-TV offerings, compared with BSkyB which currently can not offer Broadband.

91. The Chorus strategy for competing with BSkyB has been somewhat less successful. In submissions made to the Authority during its investigation, Chorus identified a number of areas in which it attempted to differentiate its product offering from BSkyB. These included:

- Bundled TV/telephony offerings: BSkyB is currently unable to offer this service;
- Chorus Sports: Chorus offers its own content through the sports channel Chorus Sports. However, this is an inferior substitute for Sky Sports and only features local sports e.g. Limerick junior football. Similar to BSkyB, Chorus does not carry Setanta;
- Set top box maintenance: Similar to Ntl Chorus maintains ownership of set-top boxes and thus repairs faults etc. for customers; and
- Discounts: Chorus offers discounted prices for customers paying by direct debit.

92. Chorus' advantages over BSkyB have, however, been offset by a number of factors including:

- Recent business restructuring: It was necessary to restructure the Chorus business in 2003 following Chapter 11 proceedings in the United States. As a result the Chorus network has suffered from a lack of investment for network upgrade leading to limitations on the quality of output;
- Technical problems and service reliability: [ ];
- Difficulties related to geography: certain Chorus areas are extremely prone to disruption in the reception of services, a problem which BSkyB does not experience since it offers digital TV and is not affected by mountainous areas;
- Less opposition to satellite dishes in Chorus areas: the erection of satellite dishes in Chorus' rural areas is less restrictive compared with Ntl's urban areas of service and thus provides a important competitive lever for BSkyB in Chorus regions vis-à-vis Ntl regions; and
- Multi room viewing: Chorus does not offer multi room viewing, it offers fewer channels and it is the only operator that charges for

installation (although with many of their bundled special offers Chorus promise customers free installation).

Other operators in the retail pay-TV market

93. The other main operators in the retail pay-TV market include Casey Cablevision, Magnet Networks and Broadworks. The latter two companies are relatively new to the market and are not fully established to compete effectively with Chorus, Ntl or BSkyB.

94. Magnet Networks is a wholly owned subsidiary of US-based international investment company Columbia Ventures Corporation (CVC), and a partner of Industria, a Nordic total Broadband solutions provider and systems integrator. Magnet Networks provides communication and entertainment services to each subscriber through a single fibre-optic cable. Services on offer by Magnet Networks include digital telephony, multi-channel digital TV, video-on-demand, and Broadband Internet. Magnet Networks launched its service to Magnet network-enabled homes in the city on December 1, 2004.[17]

95. Broadworks offers cable TV packages which consist of 22 channels. The basic package costs €19.50 per month plus a connection fee of €80 although this does include the possibility of multi-room viewing. Similar to Magnet Networks, Broadworks competes for new developments given the commercial disincentives to 'over-build' in existing cabled areas.

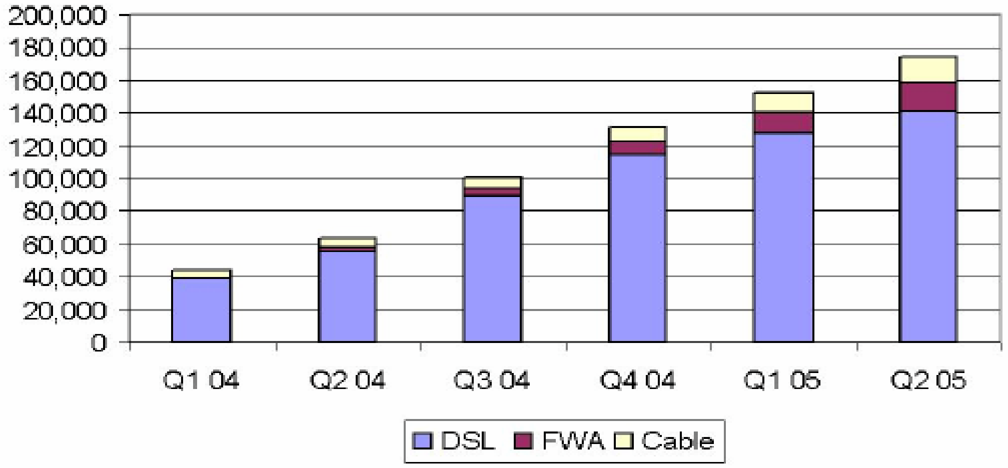
96. Casey Cablevision offers basic cable TV and Internet services in Dungarvan, Co. Waterford. Currently Casey Cablevision offers a basic cable pack with 16 channels although some of these channels are the Welsh versions of the channels e.g., HTV Wales.

97. Collectively, these other operators estimated market share is less than 5%.

Telephony and related Internet services

98. The principal competitors in this market are the incumbent provider eircom, and the Other Authorised Operators (OAOs) including Esat BT, Smart Telecom, Euphony and MCI. Chorus and Ntl are also active in the provision of Broadband services. Figure 6 below illustrates the total number of Broadband subscribers in Ireland in 2004 and 2005, by platform. By Q2, 2005 there were approximately 173,900 Broadband subscribers of which 9% were provided for on the cable networks platform and 81% were provided for over the telephone networks through ADSL (of which > 80% is provided by the incumbent operator, eircom).

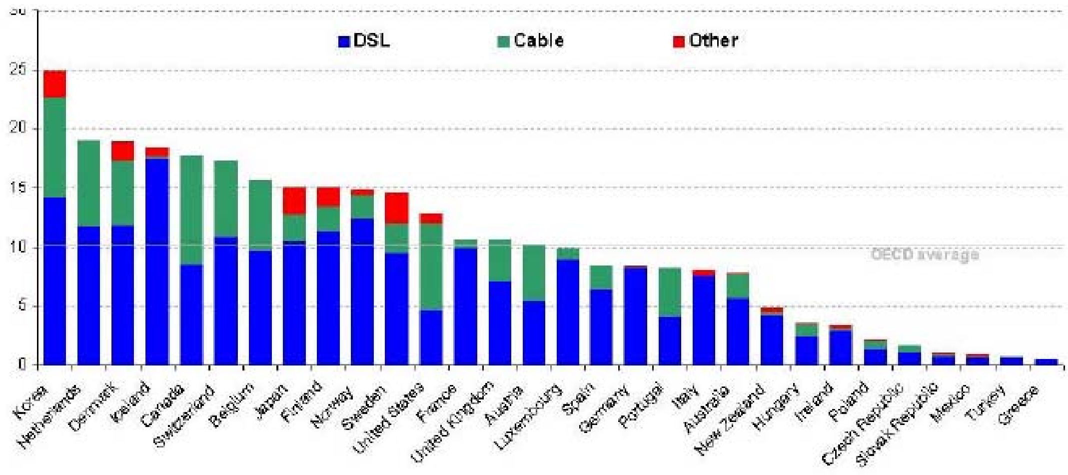
[17] Magnet Networks recently signed an agreement with ESB Telecoms, whereby ESB Telecoms will provide fibre optic services to the company over a ten year period. The agreement will enable Magnet Networks to roll out its digital entertainment services to the cities of Galway, Cork, Limerick, Waterford and Portlaoise. ESB Telecoms, a wholly-owned subsidiary of ESB, with a Telecoms network that includes a 1300km nationwide fibre optic network, and is connected to many of the e-net managed MANs as well as various key Data Centres in the Dublin area.

Figure 6 Growth in Broadband Subscribers in Ireland, by Technology, 2004 to 2005

FWA refers to Fixed Wireless Access Source: ComReg

99. The parties submit that one of the main benefits of the proposed acquisition lies in the pro-competitive effects it will have in the telephony market. Indeed the parties note that Broadband penetration is higher in those countries where Broadband is provided on both the incumbent telephone network and on competing platforms such as cable networks.[18] This is demonstrated in Figure 7 where it can be seen that Ireland has the seventh lowest Broadband penetration rate, while those countries with the highest penetration rates have a significant cable platform presence in the Broadband market.

[18] The Forfas Broadband Benchmarking Study, November 2005 identifies inter platform competition as "*one of the primary drivers of broadband take-up in many market…" and that to date "although both Chorus and NTL have been rolling out cable broadband services, cable competition has been slow to develop.*"

Figure 7 Broadband Subscribers per 100 Inhabitants, by Technology, December 2004



Source: OECD

100. The Authority's analysis of the internal documents of the undertakings involved revealed that both Chorus and Ntl recognise the potential opportunity for growth offered by the provision of Broadband and Broadband related services (such as Voice over Internet Protocol, VoIP). For example, the current Broadband penetration rate on the Ntl network is less than 5% and there is no VoIP offering.

101. Liberty Global regards the merged entity's networks as representing *"a platform with which to attack the nascent voice and data markets"*.[19] Moreover Ireland's fixed charges are at least 30% higher than the EU average[20] and are one of the highest in the EU. From the Liberty Global perspective the proposed acquisition appears to present an opportunity to develop Broadband and VoIP services in Ireland on a more cost-effective alternative access platform.

102. A review of the parties' internal business plans suggests that the proposed acquisition will ensure faster roll-out of Broadband and VoIP through upgrades to both networks: providing the capability for Broadband and VoIP to [ ]% of cabled homes by end of 2007 with Broadband and VoIP penetration rates of [ ]% and [ ]%, respectively, by 2010.[21]

103. The track record of Liberty Global supports the plans proposed by it for the merged entity post consummation which are outlined in the data/information submitted to the Authority. Liberty Global, through its subsidiaries UPC Broadband and Chellomedia is Europe's biggest cable

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[19] UGC Investment Committee Materials, 1st March 2005.

[20] EU Commission 10th Implementation Report on the electronic communications markets.

[21] The penetration rate refers to the actual take up of these services by customers whereas the capability to provide these services refers to the ability of the service provider's infrastructure to deliver the services on demand.

provider with over 6.6 million subscribers in 12 countries providing pay-TV, high-speed Internet access and telephony services over its networks. By 2005 it had over 1.4 million Broadband subscribers, 500,000 telephony customers and had begun to rollout VoIP in the Netherlands and Hungary.

6. COMPETITION CONCERNS

The market for Broadband, telephony and related Internet Services

104. The commercial imperative to upgrade the existing Chorus and Ntl networks together with the track record of Liberty Global in other European countries[22] suggests that the proposed acquisition will have a pro-competitive impact on this market.

105. There is currently one leading provider of Broadband and telephony services in Ireland, namely the incumbent telecoms provider, eircom. Cable offers an alternative platform for the provision of Broadband Internet access, Voice over Internet Protocol (VoIP) and the provision of a triple play product (TV, Internet access and voice telephony).

106. Ireland is currently ranked 19 out of the EU 25 in terms of Broadband penetration. However, countries which, unlike Ireland, have a developed cable infrastructure and the potential for platform competition in Broadband access have experienced considerably higher Broadband penetration rates.

107. The investment plans for the merged entity submitted to the Authority by Liberty Global appear to demonstrate that Liberty Global has committed to greater investment and upgrade of the current cable infrastructure and a faster rollout of new services over this infrastructure than currently envisaged in the Ntl investment plans.

108. Furthermore, an assessment of the Liberty Global investment plans by the Authority revealed that Liberty Global requires [ ]% penetration on its Broadband-enabled-network and [ ]% VoIP penetration in order to achieve the projected IRR on its investment in Ntl. From the Authority's analysis it would appear that the consequences of not upgrading the network to roll-out Broadband and VoIP will negatively impact Internal Rate of Return (IRR) on the acquisition by at least [ ]% pre-synergies and [ ]% post-synergies. Thus there is a compelling commercial imperative for Liberty Global to provide competitive Broadband services to Irish consumers.

Market structure and price effects in the absence of cross ownership / management

109. The Authority's investigation found no direct competitive overlap between the merging parties since both Chorus and Ntl serve discrete and different geographical regions. Subsequent to the regional exclusivity conferred on the cable companies in the past, Chorus and Ntl, in common with other European cable companies, have not engaged in

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[22]Liberty Global is Europe's biggest cable TV provider. LG serves approximately 6.6 million analogue subscribers in 12 countries throughout Europe, and is the largest cable provider in countries Netherlands, France, Austria, Poland, Hungary, Czech Republic, Slovakia & Slovenia in terms of subscribers. As well as providing cable services throughout Europe, LG also provides high speed Internet access (approximately 1.4 million customers in June 2005) and telephony services (approximately 500,000 fixed line customers in June 2005). In 2004 LG began the rollout of VoIP (or digital telephoning). The first countries were the Netherlands and Hungary; VoIP is currently being introduced in France.

any ‘over build’ on each others networks. Thus the regions in which both offer services are distinct and there is only a minor overlap between Chorus and Ntl consisting of approximately 1,000 customers.

110. In the absence of the cross ownership/management structure (discussed in detail below) the proposed acquisition would not have given rise to a substantial lessening of competition in the markets for (i) the wholesale procurement of content (channels) or (ii) the retail provision of multi-channel pay-TV services. Although the emergence of a national 2 player market in and of itself raises competition concerns, there is no structural change in the market resulting from the proposed acquisition. In essence the proposed acquisition is transforming two separate regional 2 player markets to a single national 2 player market. There is, therefore, no structural change in the market (save the implications of the cross ownership/management).

111. In addition, there is no indirect competitive constraint exercised by Ntl on Chorus. The Authority considered whether the proposed acquisition could eliminate benchmark competition by reducing the number of pay-TV operators from three to two. The Authority, together with its external expert adviser, concluded that Ntl does not impose a competitive constraint on BSkyB which translates into a competitive constraint on Chorus.[23] The investigation of pricing decisions revealed that BSkyB prices are determined, to a large extent, independently of the market situation in Ireland, [ ].

112. Therefore, while Ntl and Chorus do track each other’s prices there is insufficient evidence to support a finding of benchmark competition in the retail pay-TV market.

113. Regarding the evolution of pricing post consummation the Authority found evidence [of a recommendation contained in an internal Liberty Global document, where it was proposed that post consummation of the merger, Liberty Global could increase the price of cable analogue TV services offered by Ntl to the level offered by Chorus] (which will impact 71% of Ntl customers, or approximately 250,000 subscribers). This is attributable to the management strategy of Liberty Global, to migrate subscribers from analogue to digital services, and is not a result of a substantial lessening of competition.[24] In other words the existing management of Ntl could choose this strategy, as could any other potential acquirer of Ntl.[25]

114. The investigation by the Authority has revealed that the Ntl franchise area has experienced more vigorous competition vis-à-vis BSkyB than

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23 The Authority attempted to carryout an econometric analysis to determine whether Ntl imposes a competitive constraint on BSkyB which translates into a competitive constraint on Chorus. A formal econometric study was not possible due to lack of sufficient variability in prices over time. In addition the economic expert retained by the Authority concluded, with the evidence that was available (i.e., that BSkyB’s prices were determined primarily with respect to the UK market) that there was insufficient reason to undertake further analysis in this respect.

24 An analysis of the UGC investment plan post consummation reveals that aligning the cable analogue TV price of Ntl with Chorus does not appear to materially impact on IRR for the acquisition. On the contrary, it would appear that a failure to roll-out Broadband and VoIP would materially impact IRR.

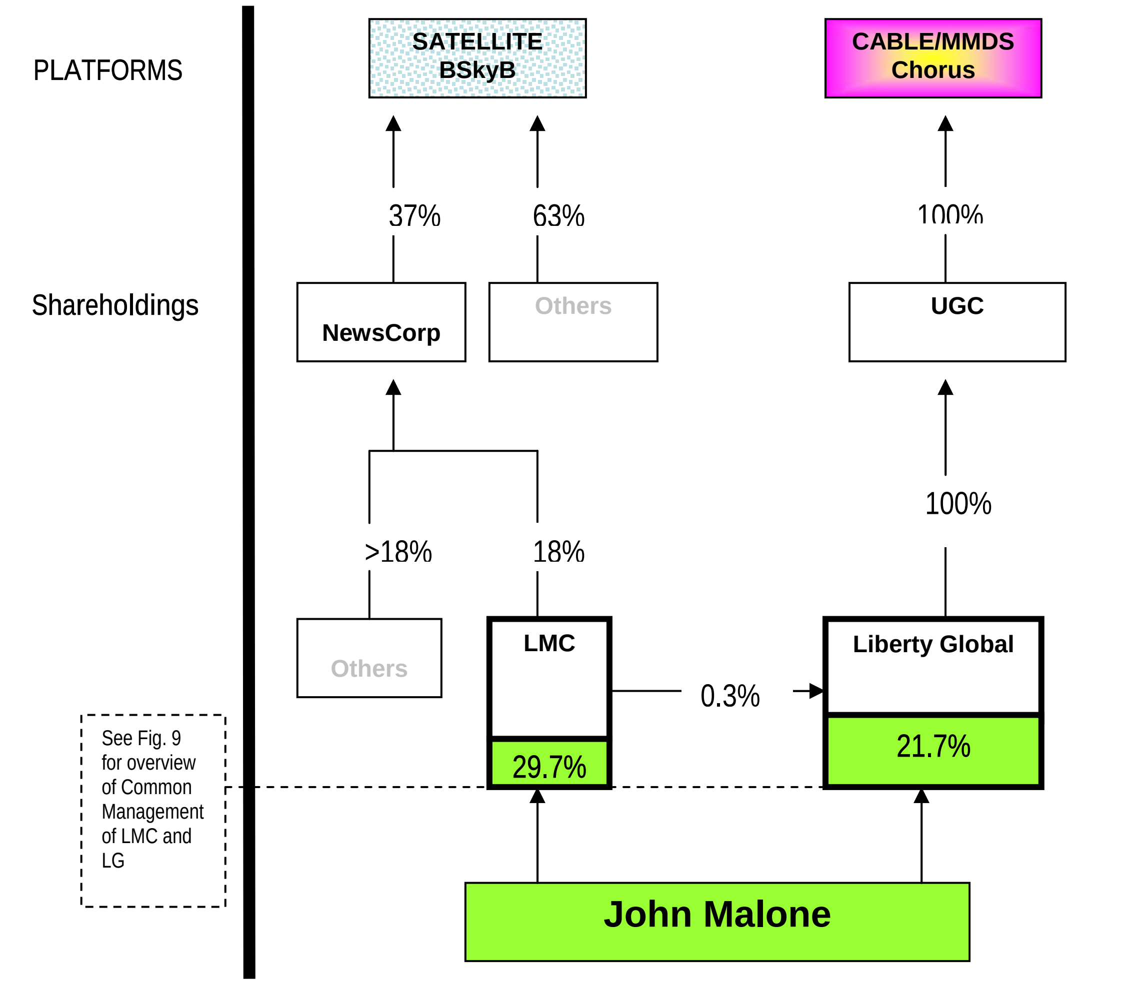
25 Ntl’s strategy was to adjust its analogue TV prices by CPI.

the Chorus area. Ntl has been more successful in negotiating wholesale content terms and conditions from BSkyB, which has allowed it to price its retail product more keenly. It has also been more creative than Chorus when differentiating its product vis-à-vis the Direct-to-the-Home satellite offering and in retaining its pay-TV customers. There are a number of reasons for Chorus' relatively poorer performance including recent business restructuring, the nature of its underlying technology and relatively less opposition to the erection of satellite dishes in Chorus' rural areas compared with Ntl's urban areas of service.

Cross shareholding and cross ownership

115. The issue of most concern to the Authority is the cross shareholding of the Chairman and controlling shareholder of Liberty Global and the cross management of persons on the boards of Liberty Global and Liberty Media Corporation ("LMC"). The concern arises from the fact that LMC is the second largest shareholder in News Corporation ("NewsCorp"), which in turn is the largest shareholder of Chorus' supplier of 'must have' premium content and their principal retail competitor, namely BSkyB. Figure 8 illustrates the nature of this cross shareholding.

Figure 8 Cross Shareholding and Ownership of John Malone in Irish Cable and Satellite Content Supply and Broadcasting



Source: The Competition Authority

116. The largest shareholder and Chairman of Liberty Global (the ultimate parent of the acquirer) is John Malone, owning 21.7% of its voting stock. John Malone, who is the Chairman and CEO of LMC, is also the largest shareholder of LMC, owning 29.7% of its voting stock. LMC is a holding company which has interests in a broad range of communications and entertainment businesses including QVC (the shopping channel) and NewsCorp.

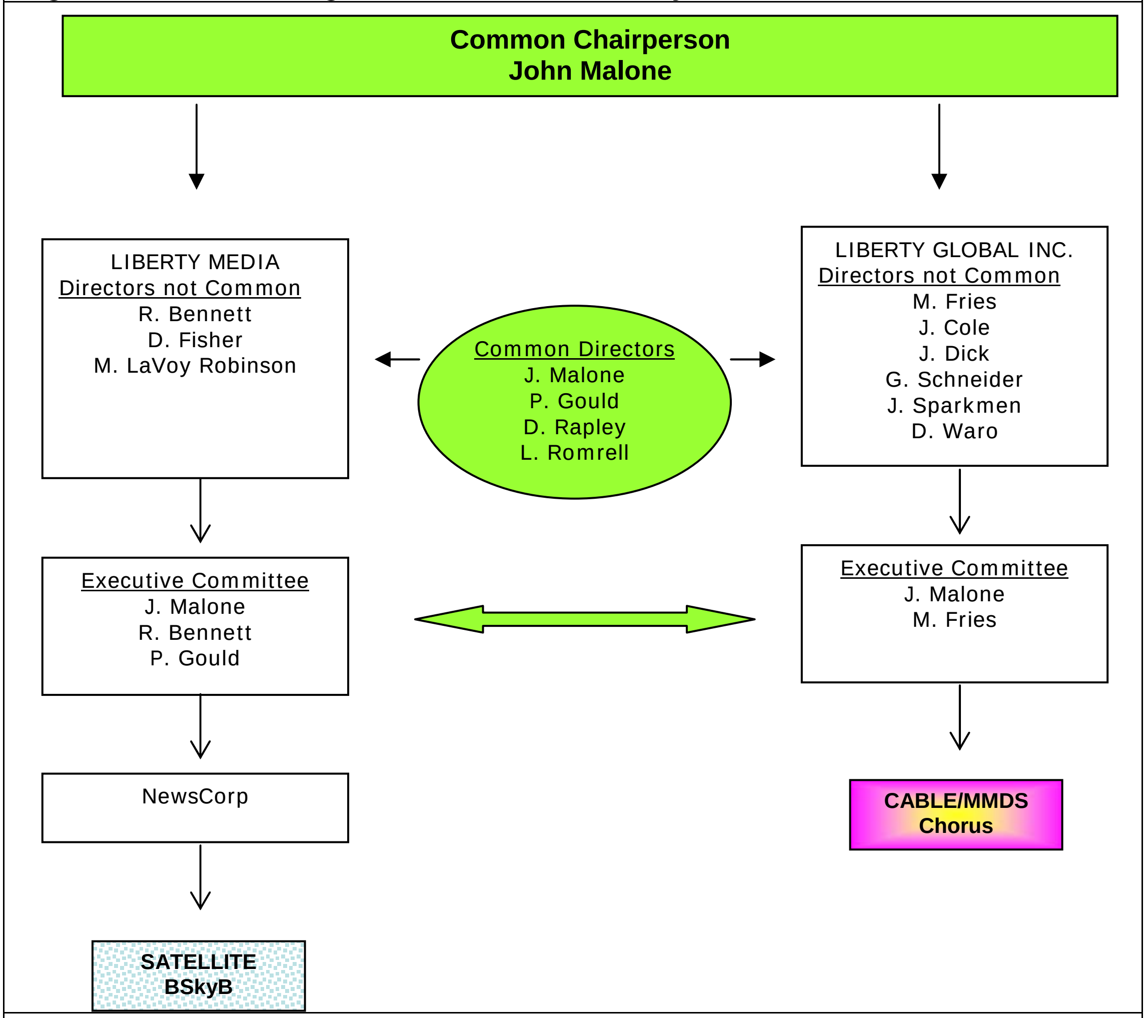
117. LMC owns 188 million voting shares in NewsCorp, in addition to another 335m non-voting Class A shares. NewsCorp is active in all areas of media, including television, film and print media. It has a global presence, with particular representation in the UK and the US. LMC's shareholding in NewsCorp represents c.18% of the voting interest in NewsCorp. LMC's shareholding in NewsCorp represents approximately 30% of LMC's market value with an economic value of $8.6 billion. NewsCorp in turn has a 37%[26] stake in BSkyB the only Direct-to-the–Home/satellite pay-TV service provider in the State, the principal competitor to both Chorus and Ntl Ireland and the principal supplier of premium content to providers of pay-TV services in Ireland.

Cross Management and Common Board Members between Liberty Global and LMC

118. Allied to the cross shareholding, there also exists common board members on the Liberty Global and LMC boards. LMC's board of directors comprises seven directors and Liberty Global's board comprises ten. There are four common directors. These four directors are John Malone, Paul Gould, David Rapley and Larry Romrell. The three directors on the LMC board who are not on the Liberty Global board were on either the UGC or LMI boards immediately prior to the merger of these companies to form Liberty Global. The Executive Committee of LMC comprises Robert Bennett, Paul Gould and John Malone (the latter two are also directors of Liberty Global). The Executive Committee of Liberty Global comprises John Malone and Mike Fries. The executive committees can exercise the power of the boards (save where the board has retained a particular matter solely to itself), by simple majority in the case of LMC or by unanimity in the case of Liberty Global.

[26] NewsCorp Annual Report of 2005

Figure 9 Cross Management between Liberty Global and LMC



Source: The Competition Authority

119. LMC does not have a representative on the board of NewsCorp and according to LMC's counsel, Charles Tanabe, LMC's shareholding does not, at present, give it this right. In 2004, in response to LMC's increased shareholding in NewsCorp, the latter implemented a "poison pill" to curtail additional purchases by LMC.

120. There remains a considerable degree of uncertainty among market commentators with respect to the future of LMC's shareholding in NewsCorp, and whether it will increase or decrease, or whether it will be traded in return for some other NewsCorp assets. This cloud of uncertainty is also casting a shadow over the implications of the cross ownership/management on competition in the market post acquisition.[27]

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[27] There is much speculation amongst analysts as to what will happen to the LMC stock in News Corp. Some examples of their comments follow:

> *"We see LMC's leverage as significantly limited by Newscorp management's indications that Newscorp has the ability to extend its poison pill without a shareholder vote"* ***(Deutsche Bank, May 2005)***
> *"We believe the management of News Corp. would like to resolve the issue of LMC's 18% voting stake in a timely and efficient manner"* ***(Cathay Financial, August 2005)***
> *"Talks with News Corp. seem to be at somewhat of a stalemate. As such LMC CEO John Malone suggested that we would not likely see a transaction with News Corp. this year and that the company is happy to remain a long-term shareholder of the shares. To that end, he suggested that he would like to see News Corp. use its balance sheet to more aggressively*

121. As stated above, the impact of the cross ownership and cross management on the incentives of the merged entity to compete with BSkyB is the primary concern of the Authority. Indeed John Malone's view on competition is well documented: *"It's like mutually assured destruction: both sides could really hurt the other if they did something really stupid. …We have to treat each other with civility to avoid all-out nuclear war*."[28] These potential impacts are discussed in more detail below.

The impact of cross ownership/management on incentives to compete

122. The parties have argued that there is no economic justification for a concern that the cross ownership between the merged entity and BSkyB is likely to increase tacit collusion or coordinated effects. The parties noted that tacit collusion is unlikely because BSkyB is an aggressive competitor to cable and the magnitude of the cross shareholding is too small to impact on the incentives to coordinate the behaviour of the merged entity and BSkyB. While the Authority agrees that there is a low level of cross shareholding between the merged entity and BSkyB, the Authority disagrees that the parties will not have the capability and incentives to coordinate their activities. For example to the extent that Mr. Malone and the four common board members act as an information conduit between the two firms, any difficulties the firms may have in coordinating tacitly on a collusive price can be bypassed by direct communication between the boards.

123. Both economic reasoning and precedent suggest that a firm that owns a financial interest in another is likely to have weakened incentives to compete. For example, if firm A acquires a 20% interest in firm B, its competitor, then firm A, in setting prices, will be aware that profits lost to it, by increasing price, will be gained by its competitor. As a stakeholder in its competitor, A will effectively gain some of the profits "lost" to B.[29]

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buy back its own shares, especially the non-voting shares given that they trade at a discount to voting." ***(Prudential Equity Group, August 2005).***

"Dr. Malone indicated that there has been no progress in its negotiations with News Corp with regard to the unwinding of its 17% voting stake and that he thought it unlikely any transaction would be announced for the balance of 2005" ***(Morgan Stanley, August 2005)***

"Dr John Malone, Chairman and CEO, indicated that the two companies continue to talk with one another but there have yet been no agreeable deals reached" ***(Edwards, August 2005)***

"We continue to believe that a cash-rich split-off is an attractive option for both parties…however, we cannot rule out other outcomes, including those involving LMC's selling the rights to vote its shares, or LMC agreeing to vote its shares in proportion to all other News Corp. votes, in return for adequate consideration" ***(Cathay Financial, August 2005)***

"Dr. Malone's comment that the solution would have to satisfy Liberty and News Corp shareholders as well as the Murdoch family only increases the difficulty in predicting the outcome" ***(Credit Suisse, July 2005).***

[28]From his biography "Cable Cowboy: John Malone and the Rise of the Modern Cable Business", by Mark Robichaux, 2002.

29 This possibility was raised in the case of ***United States v. Northwest Airlines Corp., Continental Airlines, IncCase No.---.(D.D.C. 2000)*** The case involved the acquisition by Northwest of a stake in its competitor Continental. Under this arrangement, Northwest would have a claim to approximately 14% of the profits Continental generates. In other words, Northwest would effectively lose fourteen cents for every dollar of profit it may cause Continental to lose due to competition. Although the facts of this case differ from the present situation – given that there is no third party involved – it is of interest in that the Court set out that there are at least four ways that partial equity acquisitions, even those involving much smaller ownership percentages than the 51% at issue in that case, can significantly lessen competition: (1) "*the acquiring firm gains a unilateral incentive to compete less vigorously with the acquired firm*." "Competition can be threatened…even if the acquiring firm's interest is so small that it has no influence at all over the acquired firm's decisions…Suppose that firms A and B are competitors

124. The Authority's view is that the merged entity will have less incentive to lower prices, since profits gained by the merged entity through switching will be offset by loss of profits experienced by its chief competitor BSkyB (in which the primary stockholder of the merged entity has an indirect stockholding).

125. Partial equity interests and cross-management may raise competition concerns. Such links may influence companies' competitive behaviour and affect their incentives to compete. If one firm holds a significant share in its competitor, it is likely to take that firm's business interests into account and adopt behaviour more conducive to joint profit maximisation.[30] It is not necessary that the acquired shareholding confer sole or joint control, in order for competition concerns to arise.

126. Partial equity interests may come about in a number of ways. In this case the partial equity interests arise since the principal shareholder in the acquirer owns an indirect stake in a third party competitor and this in turn provides for the possibility that influence can be exerted through the right or possibility of holding a position on the board of that company[31]. Even without having this entitlement, the holder of the shareholding interest derives profit from the company in which he holds the interest, which may affect the incentives of the other company to compete.

127. Both the European Commission and the US antitrust authorities have recognised that cross-ownership and management links can give rise to concerns (See Box 1).

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and A acquires 15% of the shares of B. Clearly the competitive game has acquired a new twist. Under the rules of competition, A would like nothing better than to force B out of the market through A's greater efficiency. As a result of the partial acquisition, however, A suddenly has a strong financial interest in B's welfare (quoting from Hovenkamp Antitrust Treatise). (2) "*The acquired firm has a corresponding incentive to compete less vigorously against the acquiring firm.*" (3) "*The acquisition weakens the acquired firm's ability to compete.*" (4) "*The acquisition makes collusion or cooperation between the two firms more likely.*"

[30] See **Minority shareholdings, interlocking directorships and the EC Competition Rules – Recent Commission practice**; Competition Policy Newsletter, Number 1, February 2002. See also ***US v. Northwest Airlines Corp., Continental Airlines, Inc.*** (DOJ, 2000), which highlights succinctly the competition concerns raised by partial equity acquisitions.

[31] See for example ***Generali/INA*** (M.1712) – In order to obtain clearance from the European Commission, the parties in this case undertook not to establish interlocking directorships with competitors in Italy. In addition, certain existing interlocks were severed, or announced to be severed.

Box 1 EU and US Case History on Cross Shareholdings and its Impact on Competition

The EU Commission has been clear in its assessment of the impact of cross shareholdings on competition:[32]

> *"if X holds a significant share in competitor Y, their profit maximisation calculus may change as they take each other's business interests into account. As a result, the economic incentives to compete are modified in that X and Y may compete less vigorously and adopt behaviour more conducive to joint profit maximisation ('non-aggression understanding). This effect will be even stronger in case of cross-shareholdings".*
> *"interlocking directorships may act as a conduit for ant—competitive transfer of price and strategic information."*

Similarly in US v Northwest Airlines Corp., Continental Airlines, Inc., the Court heard evidence that:

> *"…stock acquisition effects some sharing of profits, reduces incentives for "cheating", makes departures from agreed behaviour harder to conceal , and thus seals the bargain of express collaboration. These forces might also make tacit understandings more attractive to parties."*
>
> *"Northwest's competitive incentives towards Continental have changed simply because Northwest has a claim to approximately 14% of the profits Continental generates. In other words, Northwest will effectively lose fourteen cents for every dollar of profit it may cause Continental to lose due to competition. …Northwest will naturally be less likely to compete vigorously with Continental, and will tend toward actions that benefit Northwest's and Continental's combined interests. As Dr. Baker stated, "Northwest's incentive to compete with Continental will now be muted."*

In that case the DOJ argued that the central issue was not the level of direct control or influence but the possible harm to consumers caused by the cross shareholding:

> *"The Second Circuit reiterated the point in* Gulf & Western Indus.*, 476 F.2d 687. There the acquiring company made the argument that Northwest makes here -- that because it did not attain control over the acquired company, Section 7 did not apply. The Second Circuit rebuffed that argument, stating that the critical issue is harm, not control. "As a matter of law, we are not aware of any decision that requires numerical control in order to establish an antitrust violation. Several cases have held to the contrary. Rather, the critical question is whether the probable future effect of the transaction will be substantially to lessen competition."*

128. A number of cases in the US raise concerns with regard to the acquisition of minority interests which do not confer control. For example, in one case, involving the merger of Time Warner and Turner Broadcasting[33], the FTC was concerned about Liberty Global's predecessor, Telecommunications Inc. (TCI) owning c.24% of Turner stock. Both Time Warner and TCI's subsidiary LMC were engaged in the sale of cable TV programming services to cable infrastructure. TCI was also a cable infrastructure provider. The FTC ruled that TCI and LMC shall divest TCI's and LMC's interest in the merged entity to a separate company. No member of the board of directors of the separate company was permitted to be an officer, director or employee of TCI or to have under his or her control greater than 0.1% of the voting power of ownership interest in TCI or LMC.[34]

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[32] See Competition Policy Newsletter, Number 1, February 2002 "*Minority shareholdings, interlocking directorships and the EC Competition Rules – Recent Commission practice*" by Moavero Milaneso and Winterstein.

[33] *In the Matter of Time Warner Inc., Turner Broadcasting System, Inc., Tele-Communications, Inc., Liberty Media Corporation*.

[34] As can be seen from this case, the competitive concerns raised by the cross-ownership of shares were subject to remedy, thus allowing the merger to proceed. Other major US cases where such cross-ownership concerns were subject to remedy include *US v. AT&T Corp.* (DOJ 2000), *US v Univision Communications Inc. and Hispanic Broadcasting Corporation* (DOJ 2003), *US v. Northwest Airlines Corp., Continental Airlines, Inc.* (DOJ 2000) and *US v. AT&T Corp. and MediaOne Group, Inc.* (DOJ, 2000).

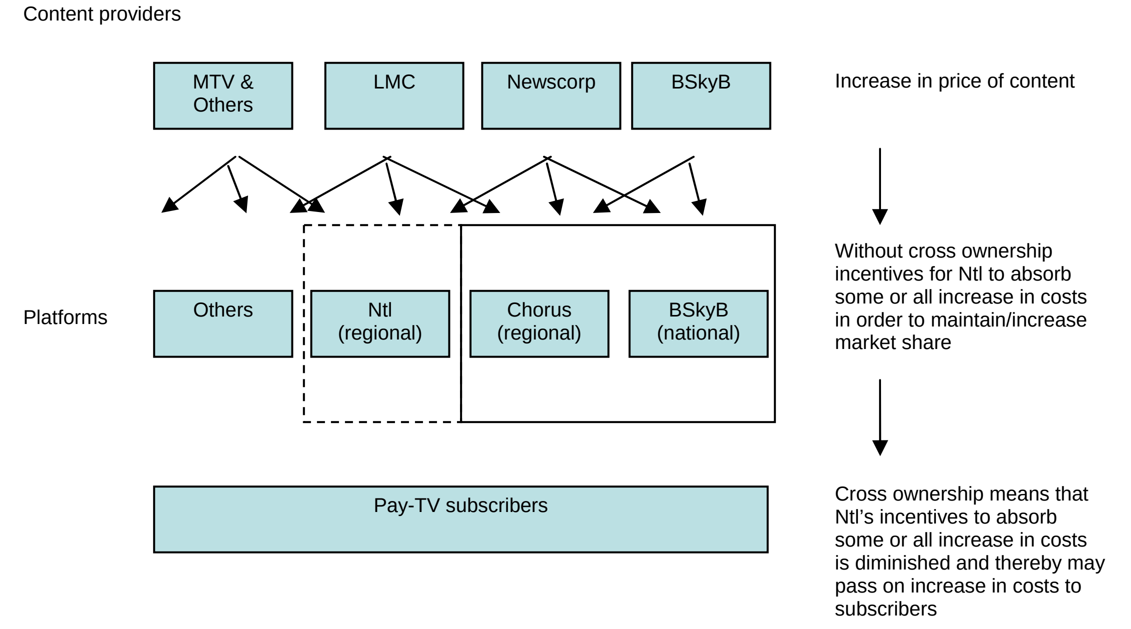
129. Cross-ownership concerns have also been raised in many cases decided by the EU Commission. Some of these cases relate to situations where one of the merging parties already owns a share in its competitor.[35] The size of the share concerned in these cases varied, but again, like the US cases, it was possible to remedy the competitive concerns, through divestments of the common shareholding and/or a ban on cross management.

130. In the case of the proposed acquisition, the Authority's view is that the cross ownership/management which currently exists in the Chorus franchise region will be extended into the Ntl region and this has a number of implications for competitive incentives:

- The wholesale provision of content from BSkyB is a key input for Ntl and Chorus. There exists the potential for rent sharing between the merged entity and its primary wholesale supplier with a pass through of increased wholesale costs to consumers (see Figure 10).

[35] E.g. ***Nordbanken/Postgirot*** (M.2567) (Postgirot had a shareholding of 27% in its competitor Bankgirot. It undertook (1) to cease to exercise any rights it derives from this shareholding, except that it would remain entitled to exercise; (2) to see that all their representatives on the board of Bankgirot have no commercial information available to the Board and (3) to divest itself of the part of its shareholding in Bankgirot in excess of 10% to one ore more purchasers to be approved by the Commission. See also ***Carrefour/Promodes*** (M.1684) (Carrefour undertook to divest a non-controlling minority shareholding in one of its competitors as a condition for obtaining clearance during phase I); ***Volvo/Renault*** (M.1980) (Volvo undertook to divest its 35% voting interest in its competitor Scania); ***Bombardier/Adtranz*** (M.2139) (Adtranz had a minority stake in a JV with one of its small competitors, Stadler and in another joint venture, which latter gave it joint control. The Commission required divestments of these minority stakes); ***Konica/Minolta*** (M.3091) (Konica agreed to divest its 37.9% shareholding in a third party); ***AOL/Time Warner*** (M.1845) (AOL agreed to sever its structural links, in the form of two joint ventures, with Bertelsmann); ***Polestar/Prisa/Inversiones*** (M.3322) (This case involved the creation of a joint venture between Polestar, Prisa and Inversiones. Prisa had a 10% interest in a competitor to Polestar. Prisa agreed to divest its 10% shareholding and the merged entity undertook not to acquire a direct or indirect influence of the third party competitor for a certain period); ***Vivendi/Canal+/Seagram*** (M.2050) (Vivendi, who controlled Canal+, also controlled 25% of BSkyB, which in turn controlled Fox, which was linked to Fox studios. Seagram owns the Universal group, another studio. Vivendi submitted an undertaking which involved cutting the link between Universal and Fox through the divestiture of Vivendi's participation in BSkyB.

Figure 10 Extension of Cross Ownership/Management into the Ntl Franchise Area



- In the past, in the Ntl franchise area, vigorous competition between Ntl and BSkyB prevented this. Indeed in its evidence to the Authority Ntl explained that it would be willing to absorb the increase in wholesale prices to maintain competitiveness. This, however, is unlikely where the owners of Ntl also has an indirect equity interest in its competitor BSkyB.

- The cross ownership/management will heighten the incentives for co-ordination in the concentrated 2 player market at the retail pay-TV level. The conditions for co-ordination are facilitated by the cross ownership/management in a market where:[36]

  - concentration is very high;
  - retail prices are transparent;
  - products are relatively homogeneous (at least for must have pay-TV content);
  - one competitor (BSkyB) controls the supply and pricing of key content for the other;
  - retaliation is possible through margin squeeze on the merged entity by BSkYB on key content.

131. In order to alleviate the Authority's concerns regarding the impact of the cross ownership/management on the incentives of the merged entity to

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36 The economist's report submitted by the parties outlined a number of market characteristics which are indicative of co-ordinated effects and concluded that these did not exist in the current market sufficient to warrant concern that co-ordinated effects might exist post consummation. The discussion presented in the economist's report, however, did not address the cross shareholding issues and the impact of this on the market characteristics outlined therein.

compete with BSkyB, the Authority has imposed a number of conditions with which the acquirer and the merged entity must comply. These are set out in detail in Appendix 1. In determining these conditions the Authority attempted to strike a balance between the proportionality of their impact on the merged entity and the acquirer, and the requirement to address the competition issues identified above.

132. The conditions imposed by the Authority address the cross management between Liberty Global and LMC and the potential impacts on incentives to compete with BSkyB by:

- The establishment of an Irish Holding Company:
    - o which will supervise the day to day business of LGI's interests in Ireland and will specifically have the final decision and approval on the terms and conditions negotiated with BSkyB for the provision/distribution of content, as well as retail pricing for video services on the Irish cable platforms;
    - o in which no individual who is, or who becomes, a member of the Boards of both LGI and LMC will be a member of its Board. In addition all current and future Common Directors (of LGI and LMC) will sign an undertaking that they will not vote in relation to any decision to be taken by the Board of LGI which specifically concerns LGI's business in Ireland;
    - o the Board of which will include an external and independent Director who will monitor compliance with the conditions imposed by the Authority and who will submit periodic reports to the Authority. If any breach of the undertakings provided by the Common Directors or LGI were to occur, the Independent Director is obligated to report this to the Competition Authority.
- ensuring that Mr. John Malone's votes will not be in a position to influence the outcome of a shareholders' meeting on issues specific to the Irish business. For as long as he is a member of the LGI Board the votes attributable to his LGI shares will be voted in the same proportion, for and against approval of any matter specific to the Irish activities of LGI that is submitted for approval at a shareholders' meeting of LGI, as the votes cast in person or proxy for or against such matter by the other shareholders of LGI;
- continuation of these conditions where:
    - o Mr. Malone or any other individual(s) are Common Directors and Mr. John Malone directly or indirectly holds more than 5% of the voting rights in LGI and LMC;
    - o LMC has more than 5% of the voting rights in NewsCorp; and
    - o NewsCorp has more than 5% of the voting rights in BSkyB.
- requiring LGI to inform the Competition Authority of any changes in its shareholding/ownership interests and/or participation in LMC or NewsCorp and of any changes it becomes aware of in LMC's interest in NewsCorp.

7. DETERMINATION

The Competition Authority, in accordance with Section 22(3)(c) of the Competition Act 2002 has determined that the proposed acquisition by UPC Ireland B.V. of MS Irish Cable Holdings Limited may be put into effect subject to the conditions specified in Appendix 1 and subject to Section 23(9)(b) of the Competition Act 2002, on the grounds that the result of the proposed acquisition will not be to substantially lessen competition in markets for goods or services in the State if the conditions specified in Appendix 1 are complied with.

For the Competition Authority

Paul Gorecki
Member of the Competition Authority

Declan Purcell
Member of the Competition Authority

Edward Henneberry
Member of the Competition Authority

APPENDIX 1 CONDITIONS IMPOSED BY THE COMPETITION AUTHORITY

Condition 1: Liberty Global Inc. (“LGI”) will create a Board in an Irish Holding Company which will supervise the day to day business of LGI’s interests in Ireland. The Irish Holding Company is expected to be Princes Holdings Limited (which will be the Irish Holding Company for the operations of Chorus and Ntl Ireland). No individual who is, or who becomes, a member of the Boards of both LGI and Liberty Media Corporation (“LMC”) (“Common Director(s)”) will be a member of the Board of the Irish Holding Company.

Condition 2: The members of the Board of the Irish Holding Company will initially be the following individuals:-

- Gene Musselman (President and Chief Operating Officer, UPC Broadband)
- Robert Dunn (Chief Financial Officer, UPC Broadband)
- The Managing Director of the Irish operations
- Shane O'Neill (LGI Chief Strategy Officer LGI)
- Anton Tuijten (Senior Vice President and General Counsel, Liberty Global Europe BV)

Condition 3: In addition, there will be an external and independent member of the Board of the Irish Holding Company (“Independent Director”). That individual will be Colm Duggan, a partner in the Dublin Solicitors’ firm, Arthur Cox, who is the external corporate law adviser in Ireland to LGI.

Condition 4: This corporate structure will be put into place within 30 days of the final approval of the proposed acquisition.

Condition 5: The Board of the Irish Holding Company will be responsible for the day-to-day management of the Irish business. In particular, the final decision and approval on the terms and conditions negotiated with BSkyB for the provision/distribution of content, as well as retail pricing for video services on the Irish cable platforms, will rest with the management and Board of the Irish Holding Company (subject to condition 6 below). For the avoidance of doubt, Common Directors will not be provided with information on any negotiations with BSkyB for the provision or distribution of content or proposals with respect to retail pricing for video services on the Irish Cable platforms. In the periodic reports which the Independent Director will submit to the Competition Authority (see conditions 12 and 13 below), the Independent Director will report on this.

Condition 6: Consistent with corporate governance policies applicable to all of LGI's worldwide operations, certain decisions may have to be referred to LGI's Chief Executive Officer (Michael Fries) or to LGI's Board for approval. With respect to decisions referred to the LGI Board, within 30 days of the final approval of the proposed acquisition, LGI will procure that all current and future Common Directors will sign an undertaking that they will not vote in relation to any decision to be taken by the Board of LGI which specifically concerns LGI’s business in Ireland. The undertakings will be provided to the

Competition Authority as part of the periodic reports to be provided by the Independent Director. At present, there are four such Common Directors. They are Messrs. John Malone, Paul A. Gould, David E. Rapley and Larry E. Romrell. LGI will procure that any new Common Director in the future will sign an undertaking in the same terms. Such an undertaking does not exclude a Common Director from voting on a proposal which includes LGI's business in Ireland along with LGI's other businesses on a consolidated basis, such as consolidated budgets, long range plans and reporting packages.

Condition 7: LGI will not provide the Common Directors with access to non-public day-to-day information concerning the operations of the Irish business, except where information is provided to them in their position as a director of LGI in aggregated form or where relevant to the LGI Board's evaluation and/or approval of consolidated results, budgets, forecasts or long range plans (which would not allow the Common Directors to request additional information on proposals or strategic initiatives specific to the Irish Business) or to the performance of the director's obligations as a director to ensure compliance with applicable US laws.

Condition 8: LGI will forward to the Board of the Irish Holding Company copies of resolutions taken by the LGI Board in relation to decisions which specifically concern LGI's business in Ireland. The Independent Director will, based on the resolution, verify who had voted in relation to the issues in question and that none of the Common Directors had voted on the specific issues. In addition, excerpts of the minutes of meetings of the Board of LGI which specifically concern the Irish business will also be forwarded to the Irish Holding Company for review by the Independent Director.

Condition 9: All resolutions of the Board of LGI, and excerpts of minutes of meetings of the Board of LGI, specifically concerning the Irish business of LGI will be forwarded to the Board of the Irish Holding Company. As a result, the Independent Director will be in a position to verify that any of the Common Directors had complied with their undertakings.

Condition 10: Colm Duggan, a partner in Arthur Cox, will be the Independent Director. If he were to step down from this position in the future, he will be replaced by one of the partners of Arthur Cox or one of the partners of one of the other leading law firms in Dublin, such appointment to be subject to the approval of the Competition Authority (such approval not to be unreasonably withheld).

Condition 11: The Independent Director's role will be to supervise the compliance by LGI and the Common Directors with the undertakings that they will give. As a matter of Irish corporate law the Independent Director will have direct access to the Irish Holding Company's management to verify compliance with the undertakings. If any breach of the undertakings provided by the Common Directors or LGI were to occur, the Independent Director will be obligated to report this to the Competition Authority.

Condition 12: The Independent Director will report generally to the Competition Authority on compliance with the Common Directors' and LGI's undertakings. The Independent Director will provide an initial report to the Competition Authority within six months of the proposed acquisition being put into effect. Reports will be provided to the Competition Authority on an annual basis thereafter, for the first time on 30th January, 2007.

Condition 13: In order to enable the Independent Director to perform his role, a compliance programme will be put in place. As part of this compliance programme, the Independent Director will provide a questionnaire to each of LGI, the Irish Holding Company and the Common Directors. Each questionnaire will specifically relate to the undertakings provided by the applicable party. The terms of the questionnaires will be subject to the approval of the Competition Authority (such approval not to be unreasonably withheld). LGI, the Irish Holding Company and the Common Directors will complete the applicable questionnaire and return it to the Independent Director. The Independent Director's report to the Competition Authority will be based upon the responses to the questionnaires.

Condition 14: A compliance programme will also be put in place at the management level within LGI's Irish operations in order to ensure compliance with the undertaking that LGI will not provide the Common Directors with access to non-public day-to-day information on the operations of the Irish Business. As part of this programme, local management will be made aware of the undertaking and will be informed that they should report to the Independent Director and to the General Counsel of Liberty Global Europe on any issues which they believe arise.

Mr. John Malone's Voting Interest in LGI

Condition 15: LGI will procure that Mr John Malone undertakes that for as long as Mr. Malone is a member of the LGI Board (and subject to the following paragraph), the votes attributable to Mr. Malone's LGI's shares (or to any nominee/trust in which Mr. Malone's shares are held) will be voted in the same proportion for and against approval of any matter specific to the Irish activities of LGI that is submitted for approval at a shareholders' meeting of LGI as the votes cast in person or proxy for or against such matter by the shareholders of LGI other than Mr. Malone. Consequently, Mr. Malone's votes will not be in a position to influence the outcome of a shareholders' meeting on issues specific to the Irish business.

Terms for Review and Termination of Conditions

Condition 16: The above conditions will apply only so long as (i) Mr. John Malone or any other individual(s) are Common Directors and Mr. John Malone at that time directly or indirectly holds more than 5% of the voting rights in LGI and LMC; (ii) LMC has more than 5% of the voting rights in NewsCorporation, Inc.; and (iii) NewsCorporation has more than 5% of the voting rights in BSkyB. LGI will provide the Competition Authority with 30 days written notice of any change in these shareholdings which LGI believes is likely to result in the termination of the commitments.

Condition 17: The conditions will be reviewed on an annual basis (or such other time as LGI requests) to determine whether (based on the competitive situation of the television market in Ireland at the time and any change in the ownership structure) such conditions are necessary or proportionate. The conditions will be reviewed by the Competition Authority if LMC were in the future to acquire directly or indirectly decisive influence over NewsCorporation within the meaning of Part III of the Competition Act and the European Communities' Merger Regulation.

Information to be Provided to the Competition Authority in the Future

Condition 18: LGI will provide (in advance where possible) in a written notice to the Competition Authority any changes in the future in the shareholding/ownership interests of, and/or participation by, LGI in LMC or News Corporation Inc, which are not otherwise notifiable under Part III of the Competition Act or the European Communities' Merger Regulation. In addition, if LGI becomes aware of any change in LMC's interest in News Corporation Inc (which is not notifiable under Part III of the Competition Act or the European Communities Merger Regulation), it will also inform the Competition Authority.

Condition 19: As provided for by Section 22(6) of the Competition Act 2002, the proposed acquisition shall be put into effect within 12 months after the making of the determination.