



DETERMINATION OF MERGER NOTIFICATION M/07/050 – UNIVERSAL/SPARROWHAWK

Section 21 of the Competition Act 2002

Proposed acquisition of Sparrowhawk Holdings Limited by Universal Pictures Holdings UK Limited

Dated 28/09/07

Introduction

1. On 5 September 2007 the Competition Authority (“the Authority”), in accordance with Section 18(1)(b) of the Competition Act, 2002 (“the Act”) was notified of a proposal whereby the Universal Pictures Holdings UK Limited (“Universal”) would acquire all of the outstanding shares of Sparrowhawk Holdings Limited (“Sparrowhawk”).
2. The Authority forwarded a copy of the notification to the Minister and notified the undertakings involved that it considers the acquisition to be a media merger, in accordance with section 23(1) of the Act.

The Undertakings Involved

The Acquirer

3. Universal, the acquirer, is a wholly-owned subsidiary of NBCU Universal, Inc. (“NBCU”).¹ NBCU, through its affiliates, is active in the development, production and marketing of entertainment, news and information which are conducted primarily in the United States. Outside the United States, its activities consist primarily of:
 - (i) its participation in the CNBC news channel;
 - (ii) licensing of programming for television broadcasting;
 - (iii) home video distribution;
 - (iv) film distribution. and,
 - (v) limited pay-TV activities.
4. NBCU’s SciFi channel, which it licenses to a platform operator in the UK, is also available in the State through that platform operator. Universal is a holding company and does not generate any turnover. Nonetheless, in 2006, NBCU generated turnover of c. US\$[] million (c. €[] million)².

¹ NBCU is a diversified, international media and entertainment company, and a subsidiary of GE (GE owns 80% of NBCU and Vivendi Universal owns 20%). GE is a global, diversified manufacturing, technology and services company, comprising a broad range of primary business units, each with its own divisions. Its primary business units include: GE Commercial Finance, GE Money, GE Industrial, GE Healthcare, GE Infrastructure, and NBCU.

² Using an exchange rate of €1 = US\$ 1.225.

The Target

5. Sparrowhawk, the target, is the parent company of Sparrowhawk Media Limited ("Sparrowhawk Media"), a worldwide media business, active primarily in the provision of pay-TV channels. Sparrowhawk Media also owns, through its subsidiaries, the worldwide international rights (excluding the United States) to films and television series and programmes contained in what is referred to as its "International Library". It licenses this content for TV broadcasting and, to a limited extent, for home entertainment (through VHS and DVD). Sparrowhawk Media is active through four main operational entities:
 - Sparrowhawk International Channels Limited, which is active primarily in the provision of Hallmark-branded pay-TV channels worldwide (but not in the United States and not in the United Kingdom³) to pay-TV providers and operators;
 - Sparrowhawk Distribution Limited, which owns the International Library and licenses its content for TV broadcasting and, to a limited extent, home entertainment;
 - Sparrowhawk Entertainment Limited, which provides the Hallmark-branded pay-TV channels in the United Kingdom; and,
 - Sparrowhawk Broadcast Services, LLC, ("SBS") which is a provider of services required to develop, support and deliver cable networks. SBS operates a broadcast facility (Network Operating Centre ("NOC")) in Denver, Colorado, USA. SBS provides video delivery for the Hallmark Channel in the US, Latin America, Asia, and Europe. SBS also originates channels owned by Altitude (a regional sports network in the United States which specialises in providing "the most comprehensive regional sports network in the Rockies".⁴
6. Sparrowhawk has no physical presence in the State, however, it provides pay-TV channels (the Hallmark Channel and Movies 24) through third party licensees to BSKyB⁵ and NTL Ireland Communications (Ireland) Limited ("NTL"). In 2006 Sparrowhawk generated world-wide turnover of c. US\$120.5 million (c. €95.97 million) and sales in the State of c. US\$[] (c. €[]).

Analysis

7. Both NBCU's affiliates and Sparrowhawk are active in the licensing of channels to TV operators in the State. Specifically, their activities overlap in the following areas:

Home Entertainment and Licensing of content for TV broadcasting

8. There is a limited overlap in the activities of NBCU's affiliates and Sparrowhawk in home entertainment and the licensing of content for TV

³The Hallmark channels are owned and distributed by a separate legal entity in the United States. In the United Kingdom, the Hallmark channels are made available through a separate Sparrowhawk Media Limited entity, Sparrowhawk Entertainment Limited.

⁴ See website of Altitude at <http://www.altitude.tv/AboutUs/altitude.aspx>

⁵ BSKyB transmits these channels to Ireland as a consequence of a license arrangement with BSKyB in the UK.

broadcasting in the State. The parties estimated their share of licensing of content for TV broadcasting based on data obtained from the Motion Picture Association of America ("MPAA").⁶ The parties estimated that, in 2006, Sparrowhawk accounted for less than [] of total revenue generated from the licensing of content for TV broadcasting. The parties estimated that, post acquisition, they would have a combined share of less than [] of the total revenue generated from licensing of content for TV broadcasting in the State.

Licensing of pay-TV channels for broadcasting

9. As stated above, NBCU's affiliates and Sparrowhawk supply pay-TV channels which are transmitted to customers in the State through NTL or Chorus Communications. These are, however, broadcast as a consequence of licenses with UK broadcasters. In terms of share of volume of pay-TV channels, the channels offered by the parties constitute a minimal proportion of the pay-TV channels available in Ireland. The parties estimated that their combined share is less than [].
10. In the light of the above, the Authority considers that the proposed transaction does not raise competition concerns as (a) it gives rise to minimal overlap in the licensing of TV content in the State; and (b) there are sufficient competitors to NBCU.

Determination

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition of all of the outstanding shares of Sparrowhawk Holdings Limited by the Universal Pictures Holdings UK Limited, will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect subject to the provisions of section 23(9)(a).

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority

⁶ The MPAA is made up of the following member studios: Buena Vista; Sony Pictures; Paramount Pictures; Fox; NBC Universal; and Warner Bros. The MPAA provides an estimate of total revenues from TV content licensing generated by its members for certain territories. This underestimates the total revenues from TV content licensing as it does not include revenues generated by European and local producers of content.