



## **DETERMINATION OF MERGER NOTIFICATION M/10/009 -**

### **UPC Communications / Broadworks**

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#### **Section 21 of the Competition Act 2002**

#### **Acquisition by UPC Communications Ireland Limited of certain business assets of Broadworks Communications Limited (in Voluntary Liquidation)**

**Dated 21 April 2010**

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#### **Introduction**

1. On 6 April 2010 in accordance with Section 18 (1) of the Competition Act, 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby UPC Communications Ireland Limited ("UPC Ireland") would acquire sole control of certain business assets of Broadworks Communications Limited in voluntary liquidation ("Broadworks") (collectively, the "Broadworks assets").
2. On 6 April 2010, the Authority forwarded a copy of the notification to the Minister, and notified the undertakings involved that it considered the proposed transaction to be a "media merger" within the meaning of section 23(1) of the Act.
3. Broadworks is in voluntary liquidation. On 22 March 2010 Michael McAteer of Grant Thornton was appointed as liquidator of Broadworks.<sup>1</sup> Upon completion of the liquidation process Broadworks will be dissolved.

#### **The Undertakings Involved**

##### *The Acquirer*

4. UPC Ireland, trading as NTL/Chorus, is a private company based in Dublin. UPC Ireland is ultimately owned by Liberty Global Inc. an international cable operator offering advanced video, voice and broadband internet services, headquartered in Denver, Colorado, U.S.A.
5. UPC Ireland operates only within the State providing a range of telecommunication services, to residential customers and also private and public sector organisations. Services provided include retail analogue and digital pay-TV, High Definition ("HD") TV services provided over cable and multipoint microwave distribution system ("MMDS") networks. UPC Ireland also provides broadband, Voice over Internet Protocol ("VOIP") and other telephony services over its cable platform.

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<sup>1</sup> The parties advise that the members of Broadworks passed a resolution to wind up the company and the Liquidator was appointed by resolution of the members on the same day. The appointment was then confirmed by the creditors of the company at a creditor's meeting.

6. For the year ended 31 December 2009, UPC Ireland's total revenue across all its residential services was approximately [...] which included approximately [...] for TV services and approximately [...] for broadband.

#### *The Target*

7. Broadworks is a private Irish company based in Dublin, Ireland. Broadworks operates only within the State providing residential analogue cable pay-TV services and broadband services<sup>2</sup> to approximately 20 housing estates in the Leinster area. Broadworks had turnover for the year ended 31 December 2009 of €440,000.<sup>3</sup>
8. The Broadworks assets to be acquired comprise principally the existing analogue network assets and customer dossiers of Broadworks. This comprises most, but not all, of the assets necessary to enable the continued provision of analogue cable pay-TV service post-transaction.

#### **Rationale for Transaction**

9. UPC Ireland intends post-transaction to upgrade existing analogue network of Broadworks. UPC Ireland has stated that upgrading this network will enable it to provide higher quality services, such as digital television, higher definition ("HD") television, high speed broadband and telephone services, to current customers of Broadworks.

#### **Third Party Submissions**

10. One informal submission, in support of the proposed transaction, was received from a Broadworks' customer.

#### **Analysis**

##### *Horizontal Overlap*

11. Within the State both UPC Ireland and Broadworks provide retail pay-TV services and broadband services to residential customers. Consequently, the proposed transaction implies a small overlap in terms of services provided by the parties. However, as set out below the proposed transaction is unlikely to give rise to competition concerns for either retail pay-TV services or broadband services in the State.

##### *Retail Pay-TV*

12. Customers in the State receive retail pay-TV services mainly through either a cable platform or via a satellite platform. Competition between suppliers of retail pay-TV services mainly occurs between the platforms, i.e., between cable and satellite. That is, rather than cable TV suppliers such as Broadworks and UPC Ireland competing directly, retail pay-TV competition is mainly between each cable supplier and BSKyB, the satellite pay-TV operator.<sup>4</sup>

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<sup>2</sup> As described for example in <<http://www.broadworks.tv>>

<sup>3</sup> This figure is provided by the Liquidator and does not distinguish between pay-TV and broadband services. For the year ended 31 December 2008 the equivalent figure was €834,000.

<sup>4</sup> There is, however, direct competition between providers of cable services for "new build" services, i.e. new sites as opposed to existing sites.

13. Data supplied by the parties<sup>5</sup> indicates that for retail pay-TV services, UPC Ireland had turnover of approximately [...] for the year ended 31 December 2009 representing a national market share of approximately [25-50%], and Broadworks had turnover for the same period of less than €0.5 million representing a national market share of less than 0.1%.
14. In addition, while an overlap can be identified in terms of the type of service provided, there is no geographical overlap. Rather, UPC Ireland and Broadworks operate in distinct, separate areas within the State. As indicated by the parties there is only one cable network in each of the estates serviced by Broadworks and the cost of building over an existing cable network is likely to be uneconomic.<sup>6</sup> This means that at present there is no competitive overlap between UPC Ireland and Broadworks in respect of the provision of retail pay-TV services, and hence customers serviced by Broadworks cannot switch to UPC Ireland and *vice versa*.

#### *Broadband*

15. Data supplied by the parties indicate that for the provision of broadband services, UPC Ireland had turnover of approximately [...] for the year ended 31 December 2009 representing a national market share of approximately [0-25%] and Broadworks had turnover of less than €0.5 million for the same period representing a national market share of less than 0.1%.
16. As with cable pay-TV, there is only one cable platform supplier of broadband services in each of the estates serviced by Broadworks. This means that at present there is no competitive overlap between UPC Ireland and Broadworks in respect of the provision of cable platform broadband services, and hence customers serviced by Broadworks cannot switch to UPC Ireland and *vice versa*.
17. The parties advise that the proposed transaction, in and of itself, does not create any obligations on existing customers of Broadworks. Current customers will have the option, but not the obligation, to purchase services from UPC Ireland if they so choose.
18. There are other platforms available to deliver broadband services, such as copper and wireless and broadband. Consumers can choose from a range of providers such as Eircom, Digiweb, Vodafone and Clearwire. The parties advise that the proposed transaction will not impact on the ability of consumers, including those who may have chosen UPC Ireland as a retail pay-TV provider, to choose between broadband platforms and broadband provider.

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<sup>5</sup> The data sources are Comreg and Screen Digest, a media-focused research, publishing and consulting company. Refer to <<http://www.screen Digest.com>>

<sup>6</sup> The parties advise that notwithstanding the likely uneconomic cost of building over an existing cable-TV network post-transaction, it will be technically and legally possible for non-UPC cables to be installed in the estates currently serviced by Broadworks as UPC Ireland will not have any exclusive wayleave rights.

### *Conclusion*

19. In summary, the Authority considers that the proposed transaction does not raise competition concerns in the State due to:
- (a) the minimal increase in the market share of UPC Ireland;
  - (b) the lack of competitive overlap between the activities of UPC Ireland and Broadworks due to the geographical exclusivity of the areas of operation of the parties; and,
  - (c) the availability of alternative platforms and the presence of significant competitors such BSkyB for retail pay-TV services and Eircom, Digiweb Vodafone and Clearwire for broadband services.

### **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 sole control by UPC Communications Ireland Ltd of certain business assets of Broadworks Communications Limited in voluntary liquidation will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect, subject to section 23(9)(a) of the Act.

### **For the Competition Authority**

Dr Stanley Wong  
Member of the Competition Authority