Submission to the Notional Competition Authority

Cable World

Cable World is grateful to the Notional Competition Authority for the opportunity to provide its views on its proposed acquisition of British Media. As part of its comments, Cable World takes into account the alternative scenario of British Media being acquired by Press Holdings.

Cable World has prepared this submission with the assistance of Baker & McKenzie, and taking account of economic analysis by NERA Economic Consulting.

1. The relevant counterfactual

For purposes of this submission, Cable World has assumed that there are only two possible realisations of the future British media landscape: either British Media merges with Press Holdings; or British Media merges with Cable World. Accordingly, ***the relevant counterfactual for the British Media/Cable World merger is the scenario whereby British Media is acquired by Press Holdings***, and *vice versa* for British Media/Press Holdings *mutatis mutandis*.

2. Market definition

Cable World is of the view that excessive emphasis on market definition is unhelpful in the present case, as it may potentially suffer from the zero/one fallacy, whereby products/services within the market are treated as symmetric competitors and products/services outside the market are viewed as having no effect. Cable World submits that the boundaries of the relevant markets are likely to be somewhat blurred, so that in the following subsections ***the market definition "labels" should be regarded as a reference framework*** rather than as references to formally defined competition policy markets.

In addition, some of the markets may already be characterised by price levels above the competitive level, so that market definition in the form of the SSNIP test might be difficult to implement.

3. Competitive assessment

3.1. Daily national newspapers

As regards daily national newspapers (which we submit still forms a separate demand to audiovisual services from both the reader/viewer and advertisers' perspective), the British Media/Cable World merger leads to very significant pro-competitive effects when compared to the relevant counterfactual, i.e. the British Media/Press Holdings merger.

First, as a result of the British Media/Cable World merger, the ***horizontal combination between The Clarion (British Media) and its closest competitor, The Sentinel (Press Holdings), would be avoided***. The merged entity would control 15% of total UK daily national newspapers. However, this share of such a candidate market definition is not an adequate reflection of the competitive effects or potential market power. It is common ground that *The Clarion* and *The Sentinel* are close competitors. It is further common ground that these two papers are the only up-market daily national newspapers in the UK, which accordingly makes them ***closest competitors***. On the basis that the mid-market and down-market segments are of equal size, i.e. 42.5% each, and the assumption that mid-market and down-market papers respectively have half and a quarter of the competitive impact of an up-market newspaper, the merged British Media/Press Holdings entity's adjusted market share would rise to 32% of all newspapers. Yet, this is probably again an *under*estimate, in that the newspaper circulation appears to be skewed away from the up-market segment (hence only 15%), so that the mid-market segment could be significantly smaller than 42.5%. Furthermore, if down-market papers had close to no effect on competition in the up-market segment, British Media/Press Holdings's adjusted market share would again rise. Computing market shares on the basis of value, rather than volume, would further raise the combined market share of *The Clarion* and *The Sentinel*.

Second, the impact of a British Media/Press Holdings combination would be particularly serious in terms of the provision of high-quality commentary and editorial analysis. The scope of substitution away from up-market newspapers by *readers* is likely to be limited. With regard to readers of a daily national newspaper, Cable World is of the view that the ***key product being offered is not factual information (which can also be obtained from other sources, e.g. TV), but editorial commentary and analysis***. Daily national newspapers are the principal source of such (more or less sophisticated) "value-added" to the factual raw material. Furthermore, readers typically identify themselves with, or are able to relate closely to the views expressed in their paper; in other words, there is still a very important class element at the core of newspaper readership patterns. Accordingly, if a reader were to switch from an up-market paper to a mid-market paper, this would amount to a change in his/her outlook on life – which is very unlikely to result from a 5-10% price rise. On that basis, the combination of British Media's *The Clarion* and Press Holdings's *The Sentinel* would effectively represent a ***merger to monopoly, which would be avoided if British Media were acquired by Cable World***. This merger to monopoly would manifest itself in an immediate ***reduction in choice for readers of newspapers and removal of the possibility of The Sentinel on-line developing as the only contender for the provision of on-line quality news content, both directly to readers and also to internet service providers***.

Third, under Press Holdings' ownership there would be some uncertainties about the future performance of *The Clarion*. It is currently a successful up-market title, which – despite a trend of falling newspaper circulation – has maintained its sales and has accordingly grown its share of UK national daily newspaper circulation to 10%. As a unit it has a relatively strong financial position, which has enabled it to make heavy investments in its website, from which it now derives significant subscription and advertising revenue. It has also developed the service of providing its news content to internet service providers such as British Media's Web Demon. In contrast, *The Sentinel* has – under the direction of Press Holdings – arrived at a situation where it now has only 5% of national circulation and an under-developed on-line offering. (A similar trend can be observed in Press Holdings' operation of West Midlands Radio, where it lost 20% of its audience share over the last two years.) This experience allows two alternative interpretations:

(i) ***Press Holdings manages its companies badly, and/or***
(ii) ***Press Holdings runs its companies in the (short-term) interests of shareholders, i.e. it tolerates long-term loss of customers in return for short-term increases in profitability.***

On either interpretation it must be concluded that consumers are better off if *The Clarion* does not fall under the control of Press Holdings.

Finally, it should be noted that, if the Notional Competition Authority were to conclude that the up-market newspaper segment is best viewed as a part of the overall newspaper sector, significant concerns over coordinated behaviour would arise, given the symmetry that would be brought about by the combination of British Media and Press Holdings in that scenario. The merger would result in a reduction from 5 market players to four competitors, each of which would have 15 to 20% of a market characterised by significant barriers to entry.

This position should be contrasted with the pro-competitive effects of a merger between Cable World and British Media when it comes to daily national newspapers. Cable World is a consumer-oriented media group aimed at providing high quality content to its UK customers, regardless of the platform, and it is prepared to invest significantly in order to do this. Its track record (for example, its investment in Sports TV and Ozone) demonstrates this. *The Clarion* would flourish under Cable World ownership, as Cable World is committed to growing its readership and investing heavily in infrastructure which will result in *The Clarion* making full use of the ever-growing opportunities to provide news content on-line to both direct readers and internet service providers.

3.2. Television Broadcasting

On the basis that free-to-air (FTA) TV and pay TV are not in competition with one another, there would be no overlap between British Media's Mercia TV and either of Press Holdings's or Cable World's pay TV channels.

However, Cable World is of the opinion that the TV "market" exhibits *several* dimensions along which it can be segmented. From Cable World's point of view, a very major distinguishing factor is given by content. In particular, ***sports content is on the whole not substitutable for e.g. drama or a documentary, in the same way that going to a football match is not substitutable for a visit to the theatre or a nature field trip***.

Given that Sports TV has secured key exclusive rights over premium current sports events like Premier League Football and Cricket test matches, it caters for a very specific viewer demand and, crucially, ***Mercia TV is – at the very least until the next round of sports rights auctions – unable to provide competition***. Accordingly, there would not be any substantial lessening of competition as a result of combining Mercia TV with Sports TV: there is no overlap in the core content, even if Mercia TV's archive includes old sports footage, and if Sports TV raised its price, customers might be more likely to switch to the full range of other sports channels, or go out and watch a match at the pub, rather than watching comedy or *Gone with the Wind* on Mercia TV. The same applies to the provision of sports content to internet service providers. An ISP such as British Media's Web Demon will not be satisfied with the offering of general TV content when what it really wishes to provide to its web users is live sporting coverage.

On a longer-term view, Mercia TV might participate in bidding for sports rights. However, Mercia TV would be no more likely to do so than other channels. Given that the relevant overlap would be in a purchasing market characterised by a bidding process – while Sports TV may have an incumbency advantage – Mercia TV would find itself in an identical position to all other (FTA and pay) TV channels that may potentially enter the bidding process. Among the potential entrants the competitive interactions would therefore start, to a first approximation, from a blank slate, so that ***in future bidding rounds for sports rights there would be a series of potential bidders, all of whom would occupy a similar position, so that the elimination of one potential bidder would have no material impact on the bidding process and outcome***.

To some extent there might also be a ***complementarity relationship between TV channels with different content***. This effect may be particularly present for "general TV" like Mercia TV on the one hand, and Sports TV on the other. General programming such as that offered by Mercia TV, typically coincides with "passive television-watching", i.e. the TV is turned on in the absence of anything else to do. In contrast, watching sport events is typically a planned activity, i.e. something that is actively pursued rather than simply chosen as a "last resort" pastime. Accordingly, if the price for a Sports TV football match went up, viewers would likely instead go to the pub and watch the match there. On the other hand, if they can be induced to watch the match at home, this might have positive externalities on other TV content: after the match they might tune into another programme. Having purchased Mercia TV's archive, Cable World intends to research the complementarity of sports and general TV content with a view to devising methods to stimulate the appeal of Mercia TV's general content through Sports TV.

Given the complementarity rather than competitiveness of sports and general content in the minds of viewers, advertisers are likely to regard the market in the same way, so that they will not see a general TV advertising opportunity as substitutable for the opportunity to advertise at peak viewing time on a premium sports channel.

The very specific viewer and advertiser demand in relation to sports content and its relationship of complementarity with general TV content are not characteristics of Press Holdings Leisure TV offering. Leisure TV's content overlaps with a large part of Mercia TV's general archive content. In contrast to Sports TV's premium content, Leisure TV's offerings do not have the same currency requirements - they cover leisure pursuits and travel, content which can usually be screened either when first made or later. Combining Leisure TV with Mercia TV's content will make Mercia TV more likely to licence its archive to Leisure TV to the exclusion of channel providers which compete with Leisure TV and producers of leisure and travel content wishing to use Leisure TV as an outlet for their programmes.

Cable World, in contrast, plans to take full advantage of its newly acquired asset in Mercia TV's archive and seek expanded and new licencing deals in respect of this archive across all platforms.

The combination of Cable Co and Mercia TV means that Cable World would own both a cable and a terrestrial platform. These platforms do not compete, given their radically different price positionings so no concerns arise as a result of their combination. In any event, Cable World will still face fierce competition from other cable TV platforms and an extremely powerful pay TV satellite company. In addition, post-merger, even if it gave priority treatment to Mercia TV (which is not proposed), Cable Co simply does not have enough market power to foreclose competition for access to cable platforms by competitors of Mercia TV.

3.3. Local newspapers/radio

Cable World recognises that at first sight the combination of its local newspapers published by the Black Country Press and the local newspapers published by British Media's Courier Group raises concerns over a substantial lessening of competition in the town of Walsall where no other local newspapers circulate. However, on closer inspection this concern turns out to be unwarranted, albeit for somewhat non-standard reasons.

In Cable World's view the ***geographic market is unlikely to be wider than Walsall***. Cable World further considers that – similar to the situation in Birmingham as a whole – the local newspaper market in Walsall is characterised by a very highly concentrated market structure. Black Country Press has two titles, and the Courier Group has eight titles which fill the product space so that a ***new entrant would find it very difficult to attract a critical mass of readers***. This has enabled both Black Country Press and the Courier Group to charge very high advertising rates, and Black Country Press's Walsall titles are consistently more profitable than its titles in Wolverhampton, Dudley or Sandell, albeit only by a relatively small margin.

Black Country Press had converged towards those rates over the years. Two years ago Cable World hired a management consulting firm to review pricing issues at Black Country Press. The consulting firm's initial advice recommended to lower advertising charges below the then prevailing level in an attempt to gain market share. However, the increase in demand was insufficient to offset the per-unit margin reduction, so that prices were again raised to the previous levels. The consulting firm with hindsight explained that the market was characterised by substantial product differentiation, so that a reduction in price would not lead to large increases in market share.

The consulting firm then used the episode to calculate the price elasticity of demand, by dividing the percentage volume increase by the percentage price reduction, and concluded that the profit-maximising price was significantly higher than the prevailing price. Accordingly, Black Country Press raised its charges, but again profits decreased – this time because the volume response was so pronounced that it more than offset the increase in the per-unit margin, by a very significant amount.

The consulting firm was unable to isolate the precise reason, but suggested that there was a very ***pronounced kink in the demand curve, whereby demand was very elastic above the prevailing price, but relatively less elastic below that price***.

Further internal consideration of this anomaly has suggested that the reason for the anomaly in the demand curve might be that ***at the kink, radio advertising becomes a competitive constraint***.

Cable World understands from its economic adviser that this phenomenon is a version of the ***Cellophane Fallacy***, namely that the local newspaper market is sufficiently concentrated to allow the market participants – without resorting to tacit collusion – to raise prices above the competitive level, up to the point where other economic goods become a substitute. At that point the ***main source of competitive constraint on both publishers of local newspapers is no longer given by each other, but by the new substitute which in the present case is local radio***. As a result, conducting a SSNIP-type market definition exercise with the competitive price level as a starting point would amount to what might be called the ***Cellophane Fallacy Fallacy***.

In summary, Cable World submits that the local newspaper market in Walsall is sufficiently concentrated that the Courier Group and Black Country Press are already, i.e. prior to the merger, charging the maximum prices that a local newspaper monopolist would charge, because even a monopolist would not surpass the price level at which radio becomes a strong competitive constraint. Accordingly, even after a combination of the Courier Group with Black Country Press, the merged British Media/Cable World would be prevented from raising its prices by the competitive constraints from local radio.

When considered against the relevant counterfactual – as opposed to the pre-merger situation – the British Media/Cable World combination actually turns out to be pro-competitive. If the Courier Group were to fall under the control of West Midlands Radio, it is likely that a SLC would occur because West Midlands Radio would no longer act as a competitive constraint on The Courier Group. This situation is avoided under the scenario where British Media is acquired by Cable World.

Cable World considers that in most circumstances local newspapers and local radio should be viewed as relatively distant competitors. However, the situation in the Birmingham area and in Walsall in particular is quite different, because the local newspaper market is highly concentrated, to the extent that the publishers of local newspapers might have managed to raise prices above the competitive level, up to the point where local radio is about to become an effective substitute for local newspapers. Accordingly, the ***main competitive constraint on the Courier Group is no longer Black Country Press, but local radio of which Press Holdings' West Midlands Radio still controls 50%***.

It is important for merger analysis to focus on the reality of the market not prior conceptions. It is easy to be trapped by the lingusitic market defintion that two newspapers are closer competitors than a newspaperand a radio station. But - on the facts of this case, and it is the facts that matter, ***radio is the binding constraint on each of the local newspapers, not the other newspaper***, so a newspaper/radio merger will likely lead to a higher price rise than a newspaper/newspaper merger.

Cable World acknowledges that there is some asymmetry in the competitive relationship between local newspapers and local radio: a price rise by local newspapers would lead to substitution towards local radio; in contrast, a price rise at the local radio would currently not lead to substitution towards local newspapers. Nevertheless, it is likely that the combination of the Courier Group and West Midlands Radio would lead to price rises at the Courier Group (because some of the diverted demand would be recaptured by Press Holdings' West Midlands Radio), and also at West Midlands Radio (because its optimal response to increased demand would likely be a combination of higher prices and higher output).

If British Media were to be acquired by Press Holdings – which is the relevant counterfactual to the British Media/Cable World merger – then the competitive constraint from West Midlands Radio on the Courier Group would be relaxed, which would likely lead to an SLC. On the other hand, if British Media were to be combined with Cable World, such an SLC would be avoided, and the British Media/Cable World merger would accordingly be pro-competitive when assessed against the relevant counterfactual of the British Media/Press Holdings merger.

Other media platforms like Cable, terrestrial (and satellite) TV platforms do not yet compete with other newly-emerging forms of audiovisual media platforms such as 3G mobile devices and internet broadband. Therefore, the fact that Cable World's Ozone 3G offering will be combined with British Media's Web Demon or Cable World's existing and newly-acquired TV platforms will not result in a substantial lessening of competition. It is true that Sports TV will be able to promise sports right holders multiple outlets - TV, 3G and the web. However, the design of the auction by which such rights are sold is in the hands of the sports rights seller, who can package the rights to major sports events in a way which ensures that no one purchaser dominates the buying.

4. Summary

There are pro-competitive benefits to a Cable World/British Media combination:

- *The Clarion* newspaper falls into the ownership of a media group which will expand its national circulation and invest heavily in the provision of its news content on-line both directly to readers and to internet service providers. The counterfactual is that *The Clarion* falls under common ownership with its only direct competitor, *The Sentinel*, resulting in a substantial lessening of competition in respect of national newspapers and in particular, upmarket quality national newspapers, and a real doubt as to whether *The Clarion* will continue to be properly resourced so that its on-going expansion into on-line offerings will be safeguarded.

- The complementarity of premium sports TV and general TV will be researched and maximised, and the substantial lessening of competition caused by combining Press Holdings' Leisure TV with Mercia TV's archive would be avoided.

- The substantial lessening of competition in the local newspaper market in Walsall which would result from the removal of West Midlands Radio as a competitive constraint on the Courier Group would be avoided.

- All other parts of British Media's assets, e.g., its Web Demon internet service provider, would benefit from being owned by Cable World, a consumer-oriented media group aimed at providing high quality content through all its platforms which has a track record of making significant investments in order to achieve its goals.

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