

Center for Digital Democracy
1718 Connecticut Avenue, Suite 200
Washington, DC 20009

September 24, 2003

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St, SW
Washington, DC 20554

Re: MB Docket No. 03-124, Applications of GM, Hughes Electronics and The News Corp. for Authority to Transfer Control

Dear Ms. Dortch:

As we noted in our opposition to this proposed transfer, the Commission must include in its analysis how this entity will impact the digital and interactive TV marketplaces. At that time, we provided information to the Commission about News Corp.'s NDS holdings, as well as its financial links to other critical middleware/set top technology controlled by proposed principal investor Liberty Media.

Here is another example that illustrates News Corp.'s already too-dominant reach across too-many TV market segments. Its NDS subsidiary has just acquired the key "MediaHighway" middleware business operated by Thomson. News Corp. will now be able to further extend its control over the critical "bundle" of elements programmers require for meaningful DirecTV distribution. News Corp. will also be able to unfairly tie its middleware holdings with programming and distribution deals across the broadcast, cable and proposed domestic DBS marketplaces.

A link to the NDS press release follows, as does a trade article.

Sincerely,

Jeffrey A. Chester
Executive Director
www.democraticmedia.org

http://www.nds.com/newspdfs/MediaHighway_130903.pdf

ITVT Newsletter, Issue 5.20 Part 1 | September 24, 2003

NDS Purchases MediaHighway Middleware Business from Thomson

In a cash deal valued at EUR60 million (\$67.8 million), News Corp.-subsidiary, NDS, has purchased the MediaHighway middleware business from French consumer-electronics manufacturer, Thomson, and also licensed various related patents from that company. (Note: Thomson acquired the MHP-compliant MediaHighway middleware when it purchased Canal+ Technologies from Vivendi earlier this year. It subsequently sold Canal+'s MediaGuard conditional access business to Kudelski for \$268 million--a move which, at the time, led to speculation that the sale of MediaHighway would shortly follow.) The deal means that NDS's middleware business (note: the company has an existing middleware platform, NDS Core) will have a total customer base of 13 million set-top boxes. The transaction is still subject to regulatory approval, but is expected to close by the end of the year. NDS says that it will fund it via its existing cash reserves.

Under the terms of the deal, Thomson will retain ownership of the MediaHighway patent portfolio and also of certain MediaHighway-related systems integration and technology skills; however, Thomson employees involved in the development and provision of MediaHighway will join NDS France (note: NDS says that the MediaHighway purchase and its recent acquisition of the assets and employees of Paris-based ITV applications provider, IDP, will transform NDS France into the company's 3rd major research-and-development facility--the other 2 are in Israel and the UK- with around 300 employees): the companies plan to work together to ensure that existing MediaHighway customers are supported, and to further develop the MediaHighway platform. The deal also calls for NDS and Thomson to form a strategic partnership under which they will offer joint solutions to network operators: the solutions will combine NDS's software with Thomson's set-top boxes, modems and headend broadcast equipment, and will be targeted primarily at new customers in the US cable and broadband IP markets. NDS's acquisition of the MediaHighway business comes just a few months after Thomson announced that it had signed a contract with US satellite-TV provider, DirecTV, to deploy MediaHighway middleware on "new enhanced standard DirecTV digital set-top boxes." At the time, the news surprised many industry observers, because DirecTV was (and still is) in the process of being acquired by News Corp., which was widely expected to deploy OpenTV middleware on the satellite platform. (Note: OpenTV middleware powers News Corp.'s Sky platform in the UK.) The fact that MediaHighway was shortly to be purchased by a subsidiary of DirecTV's future parent company will now presumably be seen by many as a factor in the satellite-TV provider's decision.

In other NDS news: the company is partnering with its News Corp.-stablemate, interactive voice response (IVR) and SMS specialist, Broadsystem. The goal is to provide broadcasters and networkers with a one-stop shop for red-button, SMS and voice-based ITV.