



Determination of the Competition Authority

Determination No. M/03/033p2 of the Competition Authority, dated 23rd February 2004, under Section 22 (3)(c) of the Competition Act, 2002

Notification No. M/03/033 – Proposed acquisition by Scottish Radio Holdings plc of Capital Radio Productions Limited

Procedural Background to Determination

1. On 23rd October 2003 the Competition Authority, in accordance with Section 18 (1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby Scottish Radio Holdings plc (SRH) would acquire the entire issued share capital of Capital Radio Productions Limited (CRPL), (together “the parties”). The Authority advised the parties and the Minister that it considered the acquisition to be a media merger within the meaning of the Act. On 20th November 2003, the Authority determined that it was unable to form a view that the result of the proposed acquisition will not be to substantially lessen competition in markets for goods and services in the State and, in accordance with Section 21(2)(b) of the Act, determined to carry out a full investigation under Section 22 of the Act.

The Parties

2. SRH is a media group whose activities, through its subsidiaries, are radio broadcasting and newspaper publishing in the UK and Ireland. SRH owns and controls Radio Ireland Limited, which broadcasts Today FM, the only national commercial radio station in Ireland.
3. CRPL trades as FM 104, a local commercial radio station broadcasting in Dublin City and County. FM 104 operated a joint selling arrangement with Cork’s Red FM up to December 2003 and currently continues to operate a joint selling arrangement with the regional station Beat FM which is due to expire by contract in June 2004. CRPL owns 8.89% of News 106 Limited t/a Newstalk 106 FM.

Submissions of Third Parties

4. On 26th November 2003, the Authority published a notice in two daily national newspapers inviting submissions relating to the transaction from interested parties. The Authority received four submissions, one of which was made by the parties.

Scope of Authority’s Investigation

5. In its investigation of the proposed transaction, the Authority carried out extensive market enquiries with and relied on the information and documentation provided by:
 - (a) Radio Teilifis Eireann (“RTE”)
 - (b) Broadcasting Commission of Ireland (“BCI”);
 - (c) Radio Stations:



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- (i) 98 FM
 - (ii) Newstalk 106 FM
 - (iii) Spin 103.8 FM
 - (iv) Lite FM
 - (v) Other radio stations outside the Dublin City and County area
- (d) Advertisers;
 - (e) Advertising Agencies;
 - (f) Media Buyers;
 - (g) Media Planners;
 - (h) Sales agencies.
6. In addition to the information and documentation provided by all of the above, the Authority also relied on the sworn testimony of Eamonn Fitzpatrick, Director of Sales, Today FM and Margaret Nelson, Director of Sales, FM 104. Both sales directors provided the Authority on request with sales reports of the sales personnel, reports from the sales director to the board of directors of their respective radio stations, and various other documentation related to the sales operations of each radio station. Supplemental submissions were also made on behalf of the parties by Aidan Dunne of Objective Communications: Analysis and Planning Limited, who provided information on the market and conducted the “buy-around” analysis discussed below, and by the economic consultants Moore McDowell and John Finnegan, .
7. To assist in the analysis of the potential effects of the merger, the Authority retained Robert Rubinovitz and Andrew Joskow, of National Economics Research Association (NERA) and formerly with the US Department of Justice, to analyse the potential price effects of the merger.

Structure of the radio industry in Ireland

National and Local Broadcasting Service Providers

8. Radio broadcasting in Ireland comprises five national stations, twenty five local stations and one regional station. National broadcasting services are provided by Radio 1, 2 FM, Lyric FM and Radio na Gaeltachta of RTE¹ and by Today FM, an independent national radio station licensed by the BCI².
9. Having regard to market enquiries conducted and having reviewed detailed reports and market information provided by the parties and third parties, the profile of the five national broadcasting services may be generally characterised as follows:
- a. **Radio 1:** Radio 1 provides broadcasting services on a national basis to all adults. Through its predominantly talk-based format and

¹ RTE is the State Broadcaster created by statute. Its radio stations are not required to be licensed.

² The BCI licenses all independent radio stations (national, regional and local) pursuant to the Radio and Television Act 1988 and Broadcasting Act 2001.



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- programming selection, Radio 1 attracts an older audience than 2 FM and Today FM.
- b. **2 FM:** 2 FM provides broadcasting services on a national basis to a demographic audience aged 20-44. 2 FM's programming and music/talk format attracts a much younger audience than Radio 1 and is comparable to the demographic audience of Today FM.
 - c. **Lyric FM:** Lyric FM provides broadcasting services on a national basis to ABC1³ adults aged 35 years plus. Lyric FM attracts an older demographic audience than either 2 FM or Today FM and is therefore not considered to be competing for the same audience.
 - d. **Radio na Gaeltachta:** Radio na Gaeltachta is an Irish language radio station providing specialist broadcasting services on a national basis. It does not accept advertising. Given the nature of the broadcasting service provided by Radio na Gaeltachta and the fact that it does not accept advertising, the Authority does not consider its listenership to be relevant to the transaction.
 - e. **Today FM:** Today FM provides broadcasting services on a national basis to a demographic audience aged 20-44. Its music/talk format, programming selection and demographic audience profile is comparable to that of 2 FM.
10. Local broadcasting services are provided by twenty-five independent commercial radio stations licensed by the BCI in designated franchise areas to a demographic audience specified in the BCI licence. In the majority of franchise areas, only one radio station is licensed to provide commercial broadcasting services. In Dublin City and County, however, six local independent radio stations provide various broadcasting services, aimed at different demographic audiences in the Dublin City and County franchise area:
- a. **FM 104:** FM 104 is licensed to provide broadcasting services in Dublin City and County to a demographic audience of 15-34 year olds. FM 104 attracts a predominantly younger audience and attracts more female listenership than Today FM. FM 104 is a music/talk-driven station (adult contemporary).
 - b. **98 FM:** 98 FM is licensed to provide broadcasting services in Dublin City and County to a demographic audience of 20-44 year olds. While its demographic audience is marginally older than FM 104, its programming selection (adult contemporary) and music/talk driven format is comparable to FM 104. Both radio stations are long-established in Dublin City and County.
 - c. **Spin 103.8 FM:** Spin 103.8 FM is a new station, launched less than three years ago, and is licensed to provide broadcasting services in Dublin City and County to the same demographic audience as FM 104.

³ This is a marketing categorisation for target audience according to income level.



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Although FM 104 and Spin 103.8 FM share demographic audience profiles and similar programming formats, Spin 103.8 FM is a new station, less-established than 98 FM and still developing its audience. One third of Spin 103.8 FM's shares are held by the group that controls 98 FM and Newstalk 106.

- d. **Newstalk 106:** Newstalk 106 is another new station. It is licensed to provide broadcasting services to a demographic audience of 20-44 year olds. Unlike 98 FM, FM 104 and Spin 103.8 FM, Newstalk 106 is talk based, with news, sport & traffic every 20 minutes, and it attracts an older audience.
 - e. **Lite FM:** Lite FM is a new station licensed to provide broadcasting services to a demographic audience of 35 years plus. Despite being a music-driven station similar to FM 104, 98 FM and Spin 103.8 FM, Lite FM attracts an older demographic audience.
 - f. **Dublin's Country 106.8 FM:** Dublin's Country 106.8FM is a new station licensed to provide special interest country & Irish music radio broadcasting services in Dublin City and County to a demographic audience of 25-52 years. Given the specialist nature of its programming format and its demographic audience, Dublin's Country 106.8 FM is a very distinct broadcasting service not comparable to the broadcasting services provided by the aforementioned radio stations.
11. One further broadcasting service is provided by Beat FM, an independent regional radio station licensed by the BCI to target a demographic audience of 15-34 year olds in the South East of Ireland region.

Regulatory Constraints

12. Entry of independent commercial stations into the Irish radio industry is subject to the award by the BCI of broadcasting licences which set out the nature of the service to be provided and the geographic area within which the broadcasting services will be provided ("franchise area")⁴. A radio station cannot legally commence broadcasting without such a licence. The decision to award new licences in addition to those that already exist is dependent upon, *inter alia*, (1) the demand for the new service proposed in the particular franchise area identified and (2) whether a frequency is available for the broadcasting of the proposed new service. To this extent, regulatory restrictions on entry amount to high barriers to entry into the market.
13. All radio stations are subject to restrictions on the amount of time they may allocate per hour to advertising and are therefore capacity restricted. For radio stations licensed by the BCI, a limit of approximately ten minutes per hour is imposed. RTE is also subject to restrictions on the amount of airtime it may

⁴ See further Radio and Television Act 1988 and Broadcasting Acts 2001.



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devote to advertising. All of RTE's stations (with the exception of Radio na Gaeltachta, which does not accept advertising) are restricted to approximately four and a half minutes per hour. Compliance with advertising restrictions by all radio stations other than RTE stations is monitored by the BCI.

14. Radio stations operating pursuant to a licence from the BCI are prevented from altering their broadcasting services to a service other than that set out in their broadcasting licence. The broadcasting licence does not specify any category or categories of audience within the general description of age and geographic area at which the broadcasting service must be aimed. However, where a radio station has been licensed to provide services to, for example, 15-34 year olds in a particular franchise area, the BCI will not allow any deviation from programming which seeks to provide a broadcasting service aimed at a demographic other than 15-34 year olds. Similarly, if a radio station has been licensed to provide specialist broadcasting services, for example a particular genre of music, changes in programming to move away from the specialist services set out in the licence will not be permitted. The BCI has stated that deviation from the terms of the licence, particularly as regards format and programming will only be permitted in very exceptional circumstances.

Radio Advertising in Ireland

Introduction

15. Radio stations derive their revenue from the sale of advertising placed on their radio stations and, to a lesser extent, from promotions and sponsorship. As noted above, RTE's three radio stations, Radio 1, 2 FM and Lyric FM, are restricted to approximately four-and-a-half minutes per hour for advertising. Independent national, regional and local stations (e.g. Today FM and FM 104) are permitted to accept advertising for up to a maximum of ten minutes per hour.

National and Local Advertising

16. Radio advertising may be conducted on a national or local basis. Advertisers use national advertising to advertise products or services on a nationwide basis. Market enquiries have shown that advertisers who choose to advertise nationally generally use advertising agencies to purchase advertising. Today FM has submitted that almost all of its advertising sales relate to national advertising.
17. Advertisers using local advertising seek to advertise their products or services in a specific local geographic area, such as, for example, Dublin, Cork or Galway. These include national advertisers, wishing to supplement a national campaign, as well as smaller locally based advertisers. Often, advertisers purchasing only local advertising deal directly with the radio station. FM 104 estimates that 35% of its advertising sales relates to local advertising, while the remaining 65% of advertising sales relates to national advertising.

Advertising Campaigns

18. Market enquiries have shown that the most common form of national advertising campaigns require "upweighting" in one or more of the main local franchise areas: e.g. Dublin, Cork, Limerick and Galway. Upweighting refers to additional



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local and/or regional advertising campaigns supporting the national campaign. Traditionally, in local franchise areas, local independent radio stations attract a significantly higher level of listenership than national radio stations. A national advertising campaign that is placed only with a national radio station will therefore not attract a sufficient level of listenership in the main local franchise areas unless local independent radio stations are also used to upweight the national campaign.

19. Having selected a national or local advertising campaign, the advertiser must then decide which radio station(s) it will use. The choice of radio station will depend on a variety of factors. Market enquiries have shown that there is no uniformity in an advertiser's approach to choosing radio stations for its advertising campaign. Advertisers rely on the data provided by the Joint National Listenership Research ("JNLR") conducted by the Market Research Bureau of Ireland ("MRBI")⁵. Of the factors taken into consideration, the most frequently considered, in no particular order, are:
 - (a) *Profile* – Advertisers and advertising agencies generally will consider the target market at which the product or service is aimed and review the radio stations which can best deliver that target audience. If, for example, a target audience of young adults in and around the Dublin region is required, radio stations such as FM 104, 98 FM or Spin FM may be considered. Statistical information on the profile of audience reached by a radio station is found in the MRBI/JNLR reports which issue twice a year.
 - (b) *Levels of listenership* – Advertisers and advertising agencies also consider the level of listenership which a radio station attracts. Although many radio stations may conduct their own listenership levels analysis, the JNLR is the most-widely used research on listenership in Ireland. There are various methods of calculating how many listeners a radio station attracts:
 - i. "Minutes listened" – This is the basis for market share percentages, and is calculated on the basis of the number of minutes a listener tuned into a particular radio station;
 - ii. "Reach" or "Listened yesterday" refers to the number of listeners who tuned into a particular radio station, for any length of time, yesterday. As with "minutes listened", this is a percentage figure.

⁵ The JNLR report provides statistical information from surveys conducted through questionnaires responded to by a representative sample of the population. The objective of the survey is to provide reliable estimates of audiences to both National and Local Radio, as a basis for the planning of advertising schedules and as a guide to programme planning in each radio station. The data is analysed by standard demographic groupings, and also by local radio franchise areas.



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Figures for reach or listened yesterday are higher than minutes listened and exceed 100% when added together, since many radio listeners tune into more than one station on a given day.

- iii. “Average quarter hour” – This is the average number of listeners which a station has per quarter hour segment.
- (c) *Cost Per Thousand* – The cost per thousand (“CPT”) measures how much it costs to reach a thousand listeners of a particular radio station. CPT is a comparative tool used by advertisers and radio stations to assess the value for money of placing an advertisement with a particular radio station.
- (d) *Capacity*⁶ - When the choice of radio stations has been made for the advertising campaign, having regard to profile, reach and/or CPT, whether or not a radio station will be used will depend on its available capacity for accepting advertising. Several radio stations may be capacity constrained or nearing capacity year-round.

Market enquiries have shown that Radio 1 and 2 FM are, in particular, capacity constrained for most of the year and an advertiser or advertising agency planning an advertising campaign with Radio 1 or 2 FM may need to ensure that they purchase their airtime considerably in advance of the scheduled campaign. For other radio stations, market enquiries have shown that capacity constraints will normally arise in the period before December due to the surge in advertising that takes place prior to Christmas.

20. In addition to the selection of a type of advertising campaign and choice of radio stations for the advertising campaign selected, advertisers may also consider when the most appropriate time of day is for advertising their particular product. Market enquiries have shown that in Ireland the most sought after times of day by advertisers are:

- Primetime – 07:00–19:00
- Drivetime – 07:00–10:00 & 17:00–19:00
- Housekeepers – Morning to Early Afternoon

Pricing and Advertising

21. Radio stations publish their advertising rates on “rate cards”. Rate cards are submitted to the BCI by independent radio stations. The prices on rate cards represent the maximum that the station will charge. Advertising slots are often

⁶ See further para 4.14(b) of the Competition Authority Notice in respect of Guidelines for Merger Analysis (Decision No. N/02/04).



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sold as a package that is tailored to suit the requirements of a particular advertiser, for example, housekeeper package, total audience package (TAP) and driver package. Rates vary depending on time of day, frequency, volume and programme.

22. Rate card prices are frequently discounted either in the form of a price reduction or bonus airtime/spots. Discounting occurs less frequently during peak advertising periods such as during the run up to Christmas. In determining how rates should be set, radio stations have regard to CPT.
23. Advertising spots for national advertisers are mainly purchased by advertising agencies. Radio stations pay commission to advertising agencies of about 15%. Generally advertising agencies are better placed to negotiate a greater rate card discount than advertisers who purchase directly from the radio station, for several reasons, e.g. larger purchase volumes by advertising agencies, and advertising agencies' stronger bargaining position arising from having a range of clients on their books.
24. Sales agencies act on behalf of radio stations, selling advertising time to advertisers or to advertising agencies. There are two established sales agencies in Ireland: Independent Radio Sales (IRS) and Broadcast Media Sales (BMS)
25. IRS is a central sales office for 16 independent local radio stations across the country. IRS offers several products to purchasers wishing to buy airtime:
 - an 'umbrella package' covering the 16 IRS stations;
 - combinations of individual stations to meet specific marketing goals.

In addition to the above products, IRS also offers two further products: "The Driver" and "The Bull's Eye". Both packages include all twenty-five independent stations - including FM 104 - in the packages:

- The Bull's Eye offers the purchaser advertising time on all participating stations concurrently during the news bulletins. This amounts to a total of 2.5 minutes per day across seven days of the week and is based on an average thirty-second spot in five news programmes each day.
- The Driver involves running concurrent advertisements during drive time.

Alternative National Advertising Campaigns

26. While market enquiries have shown that the most common form of advertising campaign for national advertising is the use of a national radio station such as Radio 1, 2 FM, Lyric FM or Today FM, there are several alternatives to national radio stations when a national advertising campaign is chosen:



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- **IRS Local Stations:** An advertiser may advertise nationally using a combination of some or all of the sixteen independent local radio stations in IRS. Although the sixteen stations participating in IRS generally are located all over Ireland, several radio stations located in more populated areas such as Dublin, Galway, Limerick, and Cork do not participate in IRS;
- **IRS Packages:** An advertiser may advertise nationally using either or both of the Bullseye or Driver Packages offered by IRS across twenty-five participating stations.
- **BMS:** An advertiser may consider advertising in core regional areas of Dublin, Cork, Limerick and Galway using the radio stations participating in BMS. BMS acts as a central sales agency for, Limerick's Live 95 FM, Cork's 96 FM/County Sound and Dublin's Lite FM (all owned by UTV) and Galway Bay FM (independently owned). By purchasing airtime on all of the BMS stations, a national advertising campaign will cover the main urban areas i.e. Dublin, Cork, Limerick and Galway.
- **Handpicking local stations:** An advertiser may decide not to opt for a national station and instead choose a combination of local stations to cover the main urban regions. However, this is more time consuming for an advertiser than opting for a national station and does not allow for an advertisement to be broadcast at the same time nationally.

Market Definition

Product Market Definition

27. Enquiries have shown that radio advertising has distinguishing features from other forms of advertising such as print, cinema, TV and outdoor: radio advertising involves substantially less production and placement costs, less production time and can be placed at short notice. That radio advertising is a distinct market is in line with a previous Authority decision⁷ and with the European Commission.⁸ Thus the relevant product market is the market for the sale of advertising slots. There are two areas of product overlap:

- i. national advertising on Today FM and FM 104 (this is the main area of overlap);
- ii. local (i.e. Dublin) advertising on Today FM and FM 104 (there is very little overlap here since Today FM has very little Dublin only advertising).

Geographic Market Definition

28. As stated in paragraph six above, under the terms of its licence granted by the BCI, Today FM broadcasts nationally. FM 104's licence allows it to broadcast in Dublin City and County. As mentioned above, c. 65% of FM 104's

⁷ Decision No: 591 in relation to Notification No. CA/1/01 – Independent Radio Sales/Shareholders Agreement

⁸ See Case No IV/M.779 – Bertelsmann/CLT at paragraph 19.



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advertising is national advertising. Much of this national advertising on FM 104 consists of local upweighting of a national campaign. Thus, the relevant geographic market is national.

Market Shares

Market share according to listenership

29. The JNLR calculates market share on the basis of “minutes listened”⁹. On this basis, the performance of radio stations providing broadcasting services in the Dublin City and County area are broken down in Table 1 below. These figures represent the market shares of the respective radio stations in two demographics: ‘All adults’ and ‘20-44’. The figures are derived from JNLR figures July 2002 – June 2003):

Table 1: Market Shares of Radio Stations in Dublin City and County
7 a.m. to midnight

DUBLIN ONLY		
Station	All Adults	20-44
RTE Radio 1	33%	14%
98 FM	17%	24%
FM 104	14%	19%
2 FM	12%	15%
Today FM	8%	11%
Lite FM	7%	9%
Lyric FM	2%	1%
Spin 1038	3%	4%
NewsTalk 106 FM	1%	1%
Dublin's Country 106.8 FM	2%	1%

30. The combined market share of the parties in the all adults category is 22% (21% for 7am to 7pm). The parties achieve a significantly higher combined market share of 30% in the 20-44 age category, which is the key demographic group for advertising. Indeed, the parties have stated that the proposed transaction gives rise to the largest combined market share in the “young adult offering”.

Market share according to Advertising Revenue

31. Market share according to number of minutes listened is not the only measurement of market share. In fact the Authority believes that the more appropriate measurement of market share is advertising revenue since that

⁹ See above para 19(b).



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reflects what the parties are selling and competing for. The radio advertising market for 2002 is estimated to be worth about 100 million euro in Ireland. Of this RTE commands €33m, FM 104 €[]m and Today FM €[]m.

32. Table 2 below sets out the approximate percentage revenues earned by each station or group of stations nationally (where figures are available) in 2002. Generally RTE is presumed to have earned 33% of the total revenues and the remaining 67% was shared amongst the commercial local and national radio stations.
33. A central element in the competitive effects of a merger involves identifying the merger's effect on market structure¹⁰. One dimension to market structure is the concentration of the market. Market concentration can be described by the HHI¹¹. Table 3 below sets out the HHI of each radio station, on the basis of its share of national advertising revenue, prior to and after the merger. The change in the HHI ("Delta") arising from the merger, describes the change in market concentration resulting directly from the merger.

Table 2 HHI – National Advertising Revenue

STATION	SHARE	PRE MERGER	POST MERGER
RTE (Combined)	33.3%	1111	1111
Today FM	[]%	[]	[]
FM 104	[]%	[]	[]
98 FM	[]%	[]	[]
Lite FM	[]%	[]	[]
Spin FM	N/A ¹²		
Red FM	[]%	[]	[]
Country FM	N/a		
Newstalk 106FM	N/a		
Galway Bay FM	[]%	[]	[]
Others	circa []%	[]	[]
Total		2466	2632
Delta			166

¹⁰ See paragraphs 3.1-3.9 of the Competition Authority's Notice in respect of Guidelines for Merger Analysis (Decision No. N/02/004).

¹¹ Herfindahl-Hirschmann Index. HHI is calculated by adding the sum of the squares of the market share of each current competitor. See Guidelines at paragraph 3.3.

¹² N/A indicates that the station did not have advertising revenues for 2002.



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34. Table 3 below sets out the approximate revenues earned by each station or group of stations serving Dublin (where figures are available) in 2002. The HHI of each radio station pre and post merger and the change in HHI is provided:

Table 3 HHI – Dublin Advertising Revenue¹³

STATION	SHARE	PRE MERGER	POST MERGER
RTE (Combined)	53%	2807	2807
Today FM	[]%	[]	[]
FM 104	[]%	[]	
98 FM	[]%	[]	[]
Lite FM	[]%	[]	[]
Spin FM	N/a		
Country FM	N/a		
Newstalk 106FM	N/a		
Total		3495	3923
Delta			428

The above HHI figures with a delta of 428 give rise to cause for further inquiry into the competitive effects of the merger.

Competitive Assessment

Unilateral Effects

35. The Authority's principal concern about the transaction was that it could lead to an increase in unilateral market power, that is, as a result of the merger, the merged firm will find it profitable to raise price since it will be acquiring a close substitute.¹⁴
36. The Authority set out its concerns in this regard in an Assessment, which the parties received on 22nd January 2004. The Authority's concern was that national advertisers would shift advertising purchases from Today FM to FM 104 in the event of a price increase by Today FM. Prior to any merger, when Today FM is determining its optimal price, it considers the fact that, if it raises its price, it will gain additional advertising revenue and profits from those advertisers who are willing to pay the higher price, but it will lose advertising revenue as some advertisers shift purchases to other stations. If, however, after

¹³ The figures for Radio 1, 2 FM, Today FM and Lyric FM do not represent Dublin only revenue.

¹⁴ CF The Authority's Guidelines on Mergers Analysis at paragraph 4.4



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the merger, a sufficient fraction of those lost advertising purchases go to FM 104, then the profits associated with those purchases are no longer lost to Today FM. Thus, the optimal price will be higher after the merger than it is before. How much higher depends in large part on how many advertisements are shifted from Today FM to FM 104 in response to the higher price by Today FM.

37. The key factors which played a role in the Authority's concern that the transaction might give rise to unilateral effects were

a. *The fact that national advertisers tend to "upweight" their advertising buys:*

The Authority's investigations showed that many advertisers tend to "upweight" a national campaign, particularly in Dublin. Data known as "Adscan" was also analysed by the Authority. Adscan is a weekly report subscribed to by advertising agencies and radio stations. It reports on what brands are advertised on what stations for a particular week. The analysis, which covered a 7 month period of Adscan reports, showed that approximately 34% of the brands advertised on Today FM are also advertised on FM 104.

b. *The fact that the two stations appeal to similar demographics and thus may be good substitutes for each other:*

Internal documentation from the parties, the Adscan data referred to above, and the Authority's own investigations, revealed that both radio stations were primarily focussed on the 20-44 age profile. As such, from an advertising perspective, they offer relatively similar profiles of listeners, ensuring that advertisers might consider them good substitutes for each other. On balance, the Authority viewed 2 FM as the closest substitute for Today FM, and 98 FM as the closest substitute for FM 104. However, there was sufficient substitutability between the two parties to give rise to concern about unilateral price rises¹⁵.

c. *The fact that 2 FM is capacity constrained:*

As mentioned above, 2 FM is the closest competitor to Today FM. However, the ability of 2 FM to absorb extra sales deriving from a price rise by Today FM is limited, as both it and Radio 1 are capacity constrained. 2 FM is booked up to []% of its capacity and Radio 1 is booked up to []% of its capacity. RTE's capacity constraints coupled with its reduced permitted advertising air time thus results in a limited ability of the RTE stations, particularly 2 FM, to respond to increased demand for national advertising should a price increase by Today FM occur¹⁶.

¹⁵ See paragraph 4.14(a) of the Authority's Merger Guidelines for a discussion of this issue.

¹⁶ See paragraph 4.14(b) of the Authority's Merger Guidelines for a discussion of this issue.



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38. The same concerns did not arise with regard to the possibility of FM 104 raising its price. Market enquiries showed that 98 FM, which is FM 104's closest competitor, does not have the same capacity constraints as 2 FM and Radio 1. That said, market enquiries have shown that 98 FM, despite having up to ten minutes advertising per hour may not, in busy periods, i.e. the autumn, be in a position to meet additional demand. However, local advertisers, which make up 35% of FM 104's advertising time would not switch to a national station such as Today FM in the event of a price rise by FM 104 since they do not seek to reach a national audience. Therefore the greater capacity of 98 FM, and the fact that Today FM is not a credible alternative to FM 104 for local advertisers, ensured there were no real concerns that FM 104 could profitably raise its price post merger.
39. Given the market framework discussed above, the Authority attempted to determine empirically the extent to which Today FM's lost sales would divert to FM 104. The Authority requested the parties to conduct a "buy-around" analysis. The purpose of this was to examine how advertising budgets are typically distributed amongst the radio stations. In particular, the analysis considered how, if advertisers stopped using Today FM (in response to a price increase), the advertising budget would be diverted to the remaining stations. In so doing, the Authority sought to estimate the degree of cross-substitution of Today FM and FM 104, or, as it is frequently known, the "diversion ratio" – the percentage of Today FM's lost sales that would be obtained by FM 104.
40. The Shapiro model¹⁷, which is commonly used by US anti-trust agencies for predicting the unilateral price increase from a merger, was applied to the circumstances of this transaction. By inputting estimates of the diversion ratio, and using financial information derived from the parties internal accounts to calculate Today FM's price/cost margin, the predictive model calculates the hypothetical price increase following the merger.
41. One of the "buy-around" analyses constructed by the parties involved an "ideal" buy that includes upweighting in Dublin for a given budget, coupled with alternative buys which excluded Today FM. Two sets of alternative buys, each excluding Today FM, were put together by the parties. It should be noted that the rate card prices were used as a proxy for the real prices charged, since real prices for all stations were not available. The first set of alternative buys shifted revenue from Today FM to either the IRS stations or the BMS stations. The second set involved a shift of all of the Today FM revenue to FM 104 or a shift of some of it to FM 104, with the rest to other local stations.
42. The analysis was primarily focussed on two demographics: adults 20-35, and adults 20-44. This was consistent with the evidence that much of Today FM's revenue came from advertising targeted at these two demographics.

¹⁷ $M \cdot D / (1 - M - D)$: named after Carl Shapiro, Transamerica Professor of Business Strategy at the Haas school of Business and Professor of Economics in the Economics Department at the University of California at Berkeley.



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43. The results of the buy around analysis demonstrated that the shift of the part of the budget spent on Today FM to the IRS/BMS stations resulted in similar national coverage as the hypothetical shift to FM 104. However, the coverage in Dublin is much better when money is shifted to FM 104 rather than the IRS/BMS stations, since a shift of Today FM revenue to FM 104 resulted in similar national coverage but greater Dublin coverage. This provided a hypothesis that FM 104 is a credible alternative for advertisers on Today FM in the event of a price increase. Dublin comprises the single largest factor in national coverage, hence the fact that similar national coverage is achieved when revenue is diverted from Today FM.
44. The buy-around analysis did not in itself provide a specific measure of the diversion ratio, but did indicate that FM 104 might constitute a viable alternative to Today FM for advertisers. However, the degree to which advertisers would be likely to divert revenue from Today FM to FM 104 is not the only factor that has to be considered in order to ascertain whether a price rise by Today FM would be profitable. The other factor is the margin that Today FM earns on current sales.
45. The parties argued strenuously that the price/cost margin¹⁸ was quite low and that it would therefore be unprofitable to have a price increase. That position, however, was unsupported and indeed was contradicted by the parties' own internal data and by established economic theory.
46. Using financial and accounting information provided by Today FM, the Authority calculated the marginal cost of selling an extra unit of advertising. Such costs should include commissions paid to sales people plus royalties paid for music, both of which increase as the number of ads sold increases. Using this measure, the margins obtained were well in excess of []%. This is comparable to experience in US radio merger cases
47. As stated above, the parties argued that these margins were not realistic, and that in attempting to assess marginal cost (which is often related to average variable cost) some accounting fixed costs should be treated as variable, therefore producing lower margins. However, the Authority did not accept this view. Even using the absolute minimum measure of fixed costs – transmission costs, net interest and depreciation, and allowing all other costs as variable – produced a margin of []%. More realistic measures – still below the figures obtained directly from the parties internal data – gave margins of 50%.
48. Figures on margins can predict price increases by using the formula $(M)(D)/(1-M-D)$, i.e. the Shapiro model, where M is the margin and D the diversion ratio. A diversion ratio of 5% from Today FM to FM 104 would, for a margin of 50%, predict a price increase of 5.56%. A 10% diversion ratio would predict a price increase of 12.5%. The following table provides the estimated price increases across all margins and diversion ratios.

Table 4 - Today FM price rise post merger - assuming symmetry between firms,

¹⁸ The difference between price and marginal cost.



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constant elasticity and fixed prices.

	M											
	10%	13%	16%	20%	25%	30%	35%	40%	45%	50%	55%	60%
1%	0.11%	0.15%	0.19%	0.25%	0.34%	0.43%	0.55%	0.68%	0.83%	1.02%	1.25%	1.54%
3%	0.34%	0.46%	0.59%	0.78%	1.04%	1.34%	1.69%	2.11%	2.60%	3.19%	3.93%	4.86%
4%	0.47%	0.63%	0.80%	1.05%	1.41%	1.82%	2.30%	2.86%	3.53%	4.35%	5.37%	6.67%
5%	0.59%	0.79%	1.01%	1.33%	1.79%	2.31%	2.92%	3.64%	4.50%	5.56%	6.88%	8.57%
6%	0.71%	0.96%	1.23%	1.62%	2.17%	2.81%	3.56%	4.44%	5.51%	6.82%	8.46%	10.59%
8%	0.98%	1.32%	1.68%	2.22%	2.99%	3.87%	4.91%	6.15%	7.66%	9.52%	11.89%	15.00%
10%	1.25%	1.69%	2.16%	2.86%	3.85%	5.00%	6.36%	8.00%	10.00%	12.50%	15.71%	20.00%
12%	1.54%	2.08%	2.67%	3.53%	4.76%	6.21%	7.92%	10.00%	12.56%	15.79%	20.00%	25.71%
14%	1.84%	2.49%	3.20%	4.24%	5.74%	7.50%	9.61%	12.17%	15.37%	19.44%	24.84%	32.31%
16%	2.16%	2.93%	3.76%	5.00%	6.78%	8.89%	11.43%	14.55%	18.46%	23.53%	30.34%	40.00%
18%	2.50%	3.39%	4.36%	5.81%	7.89%	10.38%	13.40%	17.14%	21.89%	28.13%	36.67%	49.09%

- D**
49. The numbers from this exercise suggested potentially substantial price increases as a result of the merger. The Authority was confident that plausible values of the margin were at least 50%. However, the predictive model needed to be tested by examining whether in reality FM 104 would be an alternative to Today FM.
 50. Critically, substantive investigation into this issue showed that market evidence did not support the premise that there would be a diversion of advertising to FM 104. Advertising agencies contacted were nearly unanimous in asserting that the achievement of greater Dublin coverage was not a good substitute for achieving less coverage outside of Dublin. Agencies stated that when advertisers conduct a national campaign, they do so simply because they want to reach people around the country. When asked what they would do if Today FM were to increase its price post merger, agencies stated that they would next move to RTE. If RTE were booked up, then they would use IRS, BMS and/or a combination of the main urban regionals (Dublin, Cork, Limerick, Galway and Waterford). Some stated that if RTE were booked up, they would move to the national press. Therefore there was no empirical evidence from agencies that a diversion from Today FM to FM 104 would in fact occur, at least at the level necessary to support a price increase. Advertisers perceive Today FM and FM 104 as being differentiated from each other and not interchangeable, given their different audience profiles and region of broadcasting. In particular, enquiries also showed that Today FM was not used as a Dublin upweight.
 51. Further evidence demonstrating the lack of inter-changeability between FM 104 and Today FM was provided by sworn testimony from the sales directors of the parties, who testified that when setting rate card prices their respective stations do not have regard to each other's prices and instead have regard to their closest competitors, i.e. 98 FM for FM 104 and the RTE stations for Today FM. Moreover, supporting documentation including sales reports, lost business analysis, etc, produced by the parties supported this testimony.



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52. Overall, then, the Authority concluded that there was no firm evidence that the transaction would lead to price increases through exercise of unilateral market power.

Co-ordinated effects

53. The Authority is of the opinion that the proposed transaction, in itself, is not likely to give rise to co-ordinated behaviour on prices. Such behaviour can arise where a merger facilitates competitors engaging in tacit or explicit collusion leading to higher prices.¹⁹ The main reason why the Authority came to the conclusion that co-ordinated effects was not a concern in this transaction, was the lack of price transparency. Stations invariably discount from the rate card price, therefore, it is not possible for stations to know the prices charged by other stations. Moreover the discount applied is not uniform and depends on the type of buyer and other factors referred to above.

54. Nevertheless, the Authority has identified some specific issues which could give rise to other types of collusive effects. These would arise through the existence of structural links between the parties, which could, though exchange of information and commonality of interest, lead to co-ordinated behaviour with adverse effects for consumers. These concerns include CRPL's equity interest in News 106 Limited (t/a Newstalk 106 FM), its participation in IRS, and its joint selling arrangements with Beat FM.

(a) CRPL's equity interest

55. Although CRPL's shareholding in News 106 Limited decreased to about 8% following the recent rights issue in relation to News 106 Limited, the Authority was concerned about a continued shareholding post-merger in a competitor company. Although this equity interest does not give CRPL board membership, it raises concerns, in that it facilitates the exchange of competitively sensitive business information between FM 104 and NewsTalk 106, potentially thereby reducing competition. Moreover, the owners of 98 FM are also the primary shareholders in News 106, and allowing the equity interest to be maintained could facilitate information sharing between the two largest firms in the Dublin radio market. Effective relief from this situation is best served by divestiture, which is in line with international best practice.²⁰

(b) Joint selling arrangements

56. FM 104 has acted as a temporary sales agent for Red FM: however this arrangement was discontinued as of December 2003. FM 104 currently acts as a temporary sales agent for Beat FM, which is due to terminate in June 2004.

¹⁹ See further the Authority's Guidelines at paragraph 4.17 to 4.26

²⁰ This is in conformity with best practices recommended in international merger enforcement. See, for example, Dr. Ulf Böge, President of the Bundeskartellamt, "Antitrust Enforcement in Europe: The new challenges (Merger Control) with a particular focus on the examination of minority interests under the German Merger Control Regime", Speech on the occasion of the Italian Competition Day, 9 December 2003, Rome; Deborah Platt Majoras, Deputy Assistant Attorney General at the US Department of Justice, Address before the Houston Bar Association "Houston, we have a competitive problem: How can we remedy it?", available at <http://www.usdoj.gov/atr/public/speeches/11112.pdf>.



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Should FM 104 maintain these selling arrangements post-merger, this would allow SRH to co-ordinate prices for sale of national advertising via competing networks. Given the importance of Beat FM as a component of networks of stations that provide competition to Today FM in the sale of national advertising, these selling arrangements should be discontinued.

(c) Participation in IRS

57. In addition to offering its own advertising packages, FM 104 offers airtime for advertising through its participation in IRS. IRS offers two packages – Bullseye and Driver – which allow advertisements to be placed on all participating radio stations. Participating radio stations include all sixteen IRS stations, independent local commercial stations in Dublin and the Ulster TV stations. The revenue which FM 104 earns from the Bullseye is in proportion to its shareholding in Independent Network News (INN). INN is an independent news service set up, operated and owned by independent, commercial local radio stations in Ireland. The Authority's concern is that this arrangement, i.e. FM 104's participation in IRS's Bullseye and Driver packages, would give SRH an insight into the operations of one of its few national competitors and thus facilitate co-ordinated effects.
58. The Authority came to the view that the above three concerns could be alleviated by imposing conditions that they be discontinued after the transaction has been put into effect.

Future Entry

59. It is envisaged by the BCI that four new radio stations will be licensed in the Dublin area in the next two to three years. Of these four proposed stations, only one station is expected to have the same franchise area as FM 104 and 98 FM. The other three licences are expected to be niche licences focusing on very local areas within Dublin City and County and/or a particular format or style. The Authority does not believe that these proposed licences satisfy the requirements for entry set out in the Authority's Guidelines on Mergers Analysis, i.e. timely, likely and sufficient in scope to deter the competitive effects of concern.²¹

Determination

The Competition Authority, in accordance with Section 22(3)(c) of the Competition Act 2002 has determined that the result of the proposed acquisition will not be to substantially lessen competition in markets for goods and services in the State and that the acquisition may be put into effect subject to the parties complying with the conditions specified herein:

Condition 1: Following completion of the transaction, the Parties:

²¹ See paragraph 5.1 of the Guidelines.



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- shall divest all ownership interests in News 106 Limited (t/a Newstalk 106FM), before or on December 31st 2004, to a buyer which shall be subject to the approval of the Authority;
- shall not participate on the board of News 106 Limited;
- shall not vote in respect of or participate in the operations of the business of News 106 Limited; and
- If the ownership interests of the Parties are not divested or transferred as required in (a) above, the ownership interests held by the Parties shall be transferred to a trustee nominated by the parties and subject to the approval of the Authority at the Parties' expense. The nominated trustee shall dispose of the entirety of the Parties' ownership interests forthwith to a buyer which shall be subject to the approval of the Authority.

Condition 2: Following completion of the transaction the Parties shall not renew the current sales agency contract between FM 104 and Beat FM on its expiration on June 30th 2004.

Condition 3: Following completion of the transaction the Parties shall cease any and all forms of participation in advertising sales of Independent Radio Sales on or before the six months after the date of completion of the transaction.

Condition 4: The Parties shall inform the Authority in writing within ten days of the completion of each of the conditions set forth.

Condition 5: As provided for by s.22(6) of the Act, the acquisition shall be put into effect within 12 months after the making of the determination.

For the Competition Authority

John Fingleton
Member of the Competition Authority



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Paul Gorecki
Member of the Competition Authority

Declan Purcell
Member of the Competition Authority

23rd February 2004