



DETERMINATION OF MERGER NOTIFICATION M/05/079 – Radio County Sound/Dooley and Feeney

S.21 of the Competition Act 2002

Proposed acquisition by Declan Dooley and Jarlath Feeney of Emporia Limited

Dated 1 March 2006

Introduction

1. On 7 December 2006 the Competition Authority (“the Authority”), in accordance with S.18 (1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby Jarlath Feeney (“Mr. Feeney”) and Declan Dooley (“Mr. Dooley”) would acquire the entire issued share capital of Emporia Limited (“Emporia”) from Radio County Sound Limited (“Radio County Sound”) (“the transaction”).
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 S.23 (1) of the Act.
3. On 20 December 2005, the Competition Authority issued a formal request for further information pursuant to S.20 (2) of the Act to Messrs. Dooley and Feeney and Radio County Sound Limited.
4. The formal request for further information was complied with by Messrs. Dooley and Feeney on 11 January 2006 and by Radio County Sound Limited on 1 February 2006.

The undertakings involved

5. Messrs. Dooley and Feeney, the acquirers, are active in several media and non-media businesses, listed below. Both Mr. Dooley and Mr. Feeney exercise joint control, for the purposes of the Act in respect of Galway Independent Newspapers Limited, which is a media business for the purposes of S.23 (10) of the Act.

Media Business¹

- *Galway Independent Newspapers Limited*

The Galway Independent Newspapers Limited publishes the Galway Independent, a weekly free-sheet newspaper with a circulation of approximately 50,000 copies in the area of Galway City and County.

Advertising placed with the Galway Independent, according to the submissions of the undertakings involved, are drawn from advertisers in the geographic circulation area of the Galway Independent, that of Galway City and County.

¹ Media business as defined by S.23(10) of the Act.

The Galway Independent competes with several other titles for advertising in the Galway City and County and hinterland areas, in particular, The Galway Advertiser, the Connacht Tribune, the Tuam Herald, Galway Now Magazine and Up Stairs Down Stairs.

The Galway Independent, published by Galway Independent Newspapers Limited, is the only media business in which either Mr. Dooley or Mr. Feeney is active.

Non-Media Businesses

- *DFD Developments Limited ("DFD")*

DFD is a construction company in which Messrs. Dooley and Feeney are shareholders and directors. DFD is not a media business for the purpose of the Act.

- *Pallas Construction Limited ("Pallas")*

Pallas is a construction company in which Mr. Dooley has a 50% shareholding and the position of director within the company. Pallas is not a media business for the purpose of the Act.

- *JEF Catering Limited ("JEF")*

JEF is a private company carrying out restaurant activities in which only Mr. Feeney has a 50% shareholding and a position as director. Mr. Feeney exercises joint control with one other shareholder of JEF. JEF is not a media business for the purpose of the Act.

- *Corrib Airport Limited (t/a Galway Airport) ("Galway Airport")*

Galway Airport is a private company limited by shares providing regional airport services in Galway. Mr. Feeney holds a directorship in the company but does not have a shareholding. Galway Airport is not a media business for the purpose of the Act.

- *Avicon Consultancy Services Limited ("Avicon")*

Avicon is a wholly-owned subsidiary of Galway Airport providing aviation support services which include helicopter site management and aviation-related catering. Mr. Feeney holds a directorship in the company but does not have any shareholding. Avicon is not a media business for the purpose of the Act.

- *HC Financial Services Limited ("HC")*

Neither Mr. Feeney nor Mr. Dooley has any shareholding nor exercises control in HC Financial Services Limited. However, Mr. Feeney holds a directorship in HC. HC Financial Services Limited is not a media business for the purpose of the Act.

- *Galway Marine and Leisure Development ("Galway Marine")*

Galway Marine is a company limited by guarantee which is active in the promotion of a marine in Oranmore, County Galway. Neither Mr. Feeney nor Mr. Dooley has any shareholding nor exercises control in Galway Marine. Mr. Feeney, however, holds a directorship in Galway Marine. Galway Marine is not a media business for the purpose of the Act.

6. Emporia, the target, is a limited liability company registered in the State and is owned by Radio County Sound². Emporia publishes a free-sheet newspaper, The Cork Independent (formerly known as Inside Cork) and is the only free-sheet publication in Cork City and its suburbs. It circulates approximately 20,000 copies in Cork City and its suburbs selling advertising space to advertisers local to the area in which it circulates.
7. According to the submissions of Radio County Sound, the Cork Independent competes for advertising from local advertisers with several other paid-for newspaper titles local to Cork City and its suburbs such as The Corkman, The Southern Star, The Avondhu and the Imokilly People.

Rationale of Transaction

8. Radio County Sound has submitted that the sale of Emporia to Messrs. Dooley and Feeney will enable it to focus solely on its sound broadcasting service activities.

Failure to notify on time in breach of S.18 (1) of the Act

9. The undertakings involved failed to notify the transaction within the time period set out in S.18 (1) of the Act, thus contravening that section.
10. On 24 June 2005, Messrs. Dooley and Feeney entered into an agreement with Radio County Sound to acquire the entire issued share capital of Emporia Limited ("Emporia") from Radio County Sound. Neither on nor before 24 July 2005, had either Mr. Dooley, Mr. Feeney, Radio County Sound or Emporia notified the transaction to the Authority.
11. In late July 2005, the Authority was made aware of the fact that a mandatory notifiable transaction had not been notified to it. Following investigation by the Authority, the undertakings involved jointly notified the transaction on 7 December 2005, in excess of four months after the expiration of the statutory deadline to notify the transaction.
12. The Authority, having fully considered the matter, found insufficient evidence to seek a criminal penalty, as it was not apparent that either Mr. Feeney or Mr. Dooley or any officer of Radio County Sound or Emporia knowingly and wilfully authorised or permitted the contravention, as required by S.18(11) of the Act³.

Implementation of the acquisition in breach of S.19 (1) (a) of the Act

13. S.19 (1) (a) of the Act states that a merger or acquisition to which S.18 (1) (a) or (b) applies shall not be put into effect until the Authority has so determined. S.19(2) of the Act states that any such merger or acquisition which purports to be put into effect, where that putting into effect contravenes subsection (1), is void.
14. The Authority is of the view that the acquisition of control by Messrs. Dooley and Feeney of Emporia from Radio County Sound has already been

² Radio County Sound, the vendor, is licensed by the Broadcasting Commission of Ireland, pursuant to the Radio and Television Act 1988, as a local commercial sound broadcaster in the franchise area of Cork City and County. Its ultimate parent company is Ulster Television plc ("UTV"). UTV is a media group that operates in three principal areas: commercial television, radio and new media (for example, UTV Internet and BOCOM International).

³ Competition Authority, 2004, *Acquisition by Radio Two Thousand Limited of sole control of Newstalk 106 Limited*, Merger notification M/04/003, at <http://www.tca.ie>.

put into effect in contravention of S.19(1)(a) of the Act. In forming this view, the Authority relies on discussions with and submissions of the undertakings involved both in oral and documented form that the transaction had been put into effect prior to its notification.

15. S.19(2) does not state whether a merger or acquisition which contravenes S.19 (1)(a), is rendered void for all time, or merely until such time as the Authority makes a determination. Based on a reading of all the pertinent provisions, the Authority is of the view that the section is designed to protect the Authority's right of review and is not intended to render a merger or acquisition void indefinitely.
16. In particular, the Authority notes that S.19(1)(a) does not provide that a clearance determination of the Authority should be subject to S.19(2), giving rise to the inference that the Authority's determination would allow the merger to be implemented, notwithstanding that the prior purported implementation was void.
17. The Authority takes the view that any other interpretation would result in an absurdity: namely, that a completed merger would be void for all time. Therefore the Authority considers that it can make a determination under S.21 of the Act despite its view that there has been a contravention of S.19(1)(a) and that the notified transaction is thus void. This position is consistent with international best practice.
18. Consequently the Authority considers that in this case the acquisition, which has been put into effect prior to a clearance determination from the Authority, remains void until such time as the Authority issues a clearance determination. The Authority's analysis on competition grounds, leading to its determination, is set out below.

Analysis

19. Both Emporia and Messrs. Dooley and Feeney are active in the publication of and sale of advertising in their respective free-sheet newspaper titles, The Cork Independent and The Galway Independent.

Circulation of The Galway Independent and The Cork Independent

20. In respect of circulation there is no overlap between The Cork Independent and The Galway Independent. Neither The Cork Independent nor the Galway Independent circulates in each other's respective circulation areas.

Advertising in The Galway Independent and in The Cork Independent

21. In respect of advertising there is no overlap between The Cork Independent and The Galway Independent. Advertising placed with each of the titles of the undertakings involved is placed by advertisers local to the area in which the publications circulate.

Conclusion

22. Due to the local nature of circulation of and advertising in The Cork Independent and The Galway Independent, the Authority has concluded that there is no overlap in their respective circulation or advertising activities.

23. The notified transaction, does therefore, not give rise to competition concerns.

Determination

The Competition Authority, in accordance with S.21 (2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Declan Dooley and Jarlath Feeney of Emporia Limited from Radio County Sound 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 S.23 (9)(a) of the Competition Act 2002.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority