The Competition Authority
An tÚdarás Iomaíochta

DETERMINATION OF MERGER NOTIFICATION M/07/069 – UTV/FM104

Section 21 of the Competition Act 2002

Proposed acquisition of Capital Radio Productions Limited and Babstova Limited by UTV Radio (ROI) Limited

Dated 17/01/08

Introduction

1. On 21 December 2007 the Competition Authority (the "Authority"), in accordance with section 18(1)(b) of the Competition Act, 2002 ("the Act") was notified, on a mandatory basis, of the proposed acquisition of sole control over Capital Radio Productions Limited and Babstova Limited ("CRPL") by UTV Radio (ROI) Limited.

2. The Authority advised the parties and the Minister that it considered the proposed transaction to be a "media merger" within the meaning of section 23 of the Act.

Background to the Transaction

3. On 30 July 2007, the Authority was notified, on a mandatory basis, of the proposed acquisition by Communicorp Group Limited ("Communicorp") from Scottish Radio Holdings Limited ("SRH") of its Irish radio business through the acquisition of CRPL (trading as "FM104"), Radio Ireland Limited (trading as "Today FM"), Highland Media and Communications Investments Limited and Donegal Highland Radio Limited (trading as "Highland Radio").

4. The Authority's extensive investigation of that transaction found that the transaction raised competition concerns in the radio advertising market in Dublin City and County. To address those competition concerns the parties submitted proposals to divest CRPL to an upfront buyer. On 7 December 2007, the Authority, having taken into account the proposals made by the parties determined that, in its opinion, the result of that transaction will not be to substantially lessen competition in the State. [1]

5. Communicorp carried out the sales process for CRPL. Communicorp received expressions of interests from six different parties including UTV Media plc ("UTV"). UTV emerged the successful bidder for CRPL and, on 18 December 2007, UTV Media plc and UTV Radio (ROI) Limited entered into an agreement with Communicorp whereby UTV Radio (ROI) Limited would acquire CRPL. As a result of the proposed acquisition, FM104 would be wholly-owned by UTV.

[1] See Determination No. M/07/04, *Communicorp/SRH* available at Http://www.tca.ie/MergersAcquisitions/MergerNotifications/MergerNotifications.aspx?selected_item=361

The Undertakings Involved

The Acquirer

6. UTV Radio (ROI) Limited is a wholly-owned subsidiary of UTV. UTV operates in three principal areas: commercial television; radio; and new media. UTV carries on business in Ireland, particularly through its Radio Ireland division. UTV is licensed by the Broadcasting Commission of Ireland ("BCI") to broadcast in a number of areas in Ireland, in particular, in Dublin City and County (through Q102), Limerick City and county (through Limerick Live 95FM), Cork City and County (through Cork 96/103) and throughout counties Louth and Meath (through LMFM). UTV also operates radio stations in Great Britain through Radio GB which consists of 17 local radio stations and one national radio station with a sport focus.

7. For the period ended 31 December, 2006, UTV generated turnover of £113.583 million. £48.142 million was generated from sales to customers in Ireland, which includes television advertising revenue generated by Irish based advertising agencies attempting to reach UTV's Northern Ireland television audience. The advertising turnover generated by UTV's radio assets in Ireland for the same period was [ ].

The Target

8. CRPL trades as FM104 which is involved in the business of radio broadcasting to listeners in the area of Dublin City and County. FM104 is authorised by the BCI to provide "hot adult contemporary music" services to a target audience of 15-34 year olds.

9. For the financial year ended 31 December 2006, FM104 generated turnover of [ ] in the State.

Analysis

10. The analysis of this transaction draws heavily from the Authority's determination in M/07/04, *Communicorp/SRH*, due to: (i) the inter-related nature of that transaction to the proposed transaction; and, (ii) the relevance of the extensive information gathered and analysed in the investigation of that transaction to the proposed transaction.

Relevant Product Market

11. Like Communicorp in M/07/040, UTV submits that, in addition to competing with other radio stations, its radio stations compete with press, television and other new media for a share of an advertiser's budget. UTV submits that there is a degree of substitution between the different forms of media in that a price increase by one media type would cause some re-distribution of spend, i.e., if the price of radio advertising increases, UTV would expect that some or all of a campaign's radio spend may be re-allocated to other media.

12. UTV submits that its experience is substantiated by research carried out by the UK's Office of Communications ("Ofcom") suggesting that the advertising market in the UK is broader than radio.[2] The Authority,

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[2] Ofcom, Radio Advertising Market Research. *Assessment of the Constraints on the Price of Direct and Indirect Radio Advertising* & *Harris Interactive Radio Advertising Market Research*

in M/07/040, *Communicorp/SRH*, took the view that it is inappropriate to apply the conclusions of the Ofcom Study to the radio advertising market in the State.

13. The Authority's previous decisions concerning radio mergers have found radio advertising to be in a different market to other media advertising.[3] The Authority's recent market enquiries and analysis in M07/04, *Communicorp/SRH*, supports this view. The Authority therefore has no reason to deviate from its previous view that the relevant product market affected by the proposed transaction is the market for radio advertising.

Relevant Geographic Market

14. The Authority has stated in its previous decisions that independent commercial radio stations operating pursuant to a licence from the BCI are prevented from altering their broadcasting service from that set out in their broadcasting licence. 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 different demographic or franchise area.[4]

15. Given: (a) the Authority's view that the relevant product market is the market for radio advertising; and, (b) the distinct coverage area of FM104, the Authority considers that the relevant geographic market for the purposes of assessing the proposed transaction is Dublin City and County.

Market structure

16. Market concentration refers to the degree to which production in a particular market or industry is concentrated in the hands of a few large firms. It refers in particular to the number and size distribution of firms in the relevant market: the fewer the number of firms and/or the more disparate the firms are in terms of their sizes, the more concentrated the market. The significance of concentration in competition analysis is that in highly concentrated markets in which barriers to entry are also high, effective competition is likely to be weak.

17. The most commonly used measure of concentration is the Herfindahl-Hirschman index ("HHI"), which is defined as the sum of the squares of the market shares of all firms participating in the market. According to the Authority's *Merger Guidelines*,[5] a HHI above 1800 combined with a change in HHI of less than 50 indicates, "[M]ergers in zone A are less likely to have adverse competitive effects" (paragraph 3.10).

Report. Hereinafter these two reports will be referred to as the Ofcom Study. Both reports were published on 19 October 2006 and are available on Ofcom's website: www.ofcom.org.uk.

[3] See for example, Determination No. M/03/033, *Scottish Radio Holdings/FM 104*, 5 February 2004; Determination No. M/04/003, *Radio 2000/News 106 Limited*, 5 March 2004; Determination No. M/04/078, *Ulster Television plc/Coderidge Limited*, 21 January 2004; Determination No. M/07/022, *Thomas Crosbie Holdings/South East Broadcasting,* 5 September 2007; and Determination No. M/07/040, Communicorp/*SRH,* 7 December 2007.

[4] See for example, Determination No. M/03/033, *Scottish Radio Holdings/FM 104*, 5 February 2004; and Determination No. M/07/040, *Communicorp/SRH,* 7 December 2007

[5] Competition Authority, 2004, *Notice in Respect of Guidelines for Merger Analysis,* Decision No. N/02/004, hereinafter referred to as Competition Authority, *Merger Guidelines*, which are available on the website, www.tca.ie.

Therefore, Zone A mergers are less likely to raise competition concerns.

18. While market shares and the HHI index are used as screening mechanisms, reference to other market characteristics is necessary in order to determine the presence of market power post acquisition. The Authority's *Merger Guidelines* point out that "factors that affect whether mergers in zones A and B might raise competition concerns include: (a) a regulatory barrier to entry; (b) very high customer switching costs; … (d) a merger involving a maverick firm; and (e) a history of collusion, or other competition concerns, in the market" (paragraph 3.11).

Market Structure for the Radio Advertising Market in Dublin City and County

19. Twenty-six independent commercial radio stations are licensed by the BCI to provide radio broadcasting services in designated franchise areas to a demographic audience specified by the BCI. In the majority of franchise areas, only one radio station is licensed by the BCI to provide broadcasting services. In Dublin City and County, seven independent commercial radio stations provide broadcasting services aimed at different demographic audiences:

(a) **FM104**: provides broadcasting services in Dublin City and County to a demographic audience of 15-34 year olds. FM104 provides a music (adult contemporary)/talk programming format. FM104 attracts a younger female audience.

(b) **98FM**: provides broadcasting services in Dublin City and County to a demographic audience of 20-44 year olds. While its audience is marginally older than that of FM 104, its music content (adult contemporary) and programming format is comparable to that of FM104. Both 98FM and FM104 are long-established in Dublin City and County.

(c) **Spin 103.8 FM**: provides broadcasting services in Dublin City and County to the demographic audience of 15-34 year olds. Spin 103.8 FM's core audience is 15-24 year olds. Spin 103.8 FM was launched less than three years ago. Although FM104 and Spin 103.8 FM share similar demographic audience profiles and programming formats, Spin 103.8 FM is less-established and still developing its audience.

(d) **Q102**: provides broadcasting services to a demographic audience of 35 years plus. Despite being a music-driven station similar to FM 104, 98FM and Spin 103.8 FM, Q102 attracts an older demographic audience.

(e) **Dublin's Country Mix 106.8 FM**: provides specialist country & Irish music broadcasting services in Dublin City and County to a demographic audience of 25 years plus. Given the specialist nature of its programming format and its older demographic audience, Dublin's Country Mix 106.8 FM offers a very distinct broadcasting service in comparison to the services provided by the aforementioned radio stations.

(f) **Phantom 105.2 FM:** provides "alternative rock" music in Dublin City and County targeting 18 - 34 year olds. Phantom 105.2 FM was launched on 31 October 2006. As with Dublin's Country Mix 106.8 FM, Phantom 105.2 FM provides a specialist broadcasting service.

20. In M/07/040, *Communicorp/SRH*, the Authority considered data obtained from various sources in describing the market structure of radio listenership and advertising. Listenership is measured as minutes listened to radio stations based on a survey of the population conducted by the Joint National Listenership Research survey ("JNLR"). Advertising is measured using two metrics: radio advertising revenue, based on a variety of sources such as the parties' internal documents, RTE, third party submissions and the notification in M/07/040; and, the number of minutes of advertising on radio stations based on Adscan data.[6] Market shares obtained from all these various sources provided a similar result in respect of: (i) the market share of each radio station; and, (ii) the measure of HHI. Therefore, the use of JNLR listenership data will suffice for purpose of assessing the effect of the proposed transaction on the structure of the market.[7]

21. Assuming that the Dublin City and County market comprises only radio stations that are licensed to cover this franchise area, the Authority used national JNLR "minutes listened" data for Dublin City and County covering the period June 2006 to July 2007 to calculate the market shares based on listenership in the Dublin City and County radio advertising market. The market shares are based on the percentage of minutes listened to a particular radio station.

22. Table 1 is used in establishing: (i) the level of overlap in listenership between the radio stations involved in the proposed transaction with respect to Dublin City and County resulting from the two inter-related transactions; and, (ii) the change in concentration resulting from the acquisition of FM104 by UTV from Communicorp.

[6] For further details of the Adscan data, see M/07/040, *Communicorp/SRH*, paras 4.16 and 4.17.

[7] The Authority's questionnaire survey in M/07/040 showed 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. The JNLR survey data shows that, 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 local franchise areas unless local independent radio stations are also used to upweight the national campaign. Thus, local radio stations can be considered a complementary offering for national radio advertising campaigns.

Table 1
Market Shares, Dublin City and County Radio Stations, Two Different Mergers, Measured in Minute Listened, 7am to Midnight, April 2006-March 2007

A. Market Shares, Communicorp Acquisition of SRH(FM104)

Radio Station	Ownership	Pre-Merger Market Share (%)	Post Merger Market Share (%)
FM 104	SRH	32.5	
98 FM	Communicorp		
Spin 103.8	Communicorp	44.3	76.8 (Communicorp)
Q102	UTV	15.4	15.4
Country Mix		6.2	6.2
Phantom		1.6	1.6
Total		100	100
HHI		3297	**6176**
Delta			**2879**

B. Market Shares, UTV Acquisition of FM104 from Communicorp

Radio Station	Ownership	Pre-Merger Market Share (%)	Post Merger Market Share (%)
98 FM	Communicorp		44.3
Spin 103.8	Communicorp		
FM 104	Communicorp	76.8	
Q102	UTV	15.4	47.9 (UTV)
Country Mix		6.2	6.2
Phantom		1.6	1.6
Total		100	100
HHI		6176	**4298**
Delta			**-1878**

Note: Phantom only began broadcasting on 31 October 2006
Source: Competition Authority, Determination No. M/07/040, Communicorp/SRH, Table 5, p. 34, based on JNLR.[8]

23. The following conclusions can be drawn from Table 1:

- Depicted in red, in Panel A, the acquisition of FM104 by Communicorp occurred in an already concentrated market, with a HHI of 3297, combined with a very large delta, 2879. That is the merger falls in Zone C of the *Merger Guidelines*.

- Depicted in blue, in Panel B, the acquisition of FM104 by UTV from Communicorp will result in a reduction of the level of concentration of the market and a merger that falls in Zone A of the *Merger Guidelines*. That is, a HHI above 1800 with a delta of less than 50.

24. The competitive effects of the proposed acquisition on the market for Dublin City and County radio advertising are assessed below.

Competitive analysis

[8] Table A.3, page 70 in M/07/040, *Communicorp/SRH*, shows that the inclusion of national radio stations does not affect the structure the Dublin City and County radio advertising market.

25. The fact that a merger falls into Zone A does not necessarily mean that the merger will not lead to a substantial lessening in competition. As stated in paragraph 18 above, the Authority's *Merger Guidelines* point out factors that affect whether a merger in Zone A will raise competition concerns include: (a) a regulatory barrier to entry; (b) very high switching costs; … (d) a merger involving a maverick firm; and, (e) a history of collusion, or other competition concerns, in the market.

26. The following factors are considered in the competitive analysis:[9]

- entry, which has to be timely, likely and sufficient to constrain any post-merger price increase;
- closeness of competition, the degree to which Q102 and FM104 are each others closest substitutes in Dublin City and County. If they are each others closest substitutes then the merger is more likely to raise competition concerns; and,
- co-ordinated effects, which refers to the increased likelihood that radio stations in the Dublin City and County will act in such a way as to sustain price increases in advertising rates. Points (d) and (e) listed above are subsumed under this heading.

To a considerable extent the analysis below will draw upon the Authority's Determination No M/07/040, *Communicorp/SRH.*

Entry

27. The Authority's *Merger Guidelines* require that for entry to be a constraint on the ability of the merged entity to raise price post-merger, entry must be timely, likely and sufficient.

28. UTV submits that entry is likely and timely. In particular, UTV submits that there will be new entrants in Dublin City and County under the new multi-city and classic rock licences. The multi-city license will cover Dublin City and County and commuter belt, Cork City and County, Limerick City and County, Co. Clare and Galway City and County.

29. The multi-city service is likely to be awarded on 20 January 2008, but is not likely to be on air until late 2008 or early 2009. It will then of course have to build up listenership and a brand image in order to be able to challenge existing radio stations. It seems unlikely that, by early 2010, it will be in a position to credibly constrain the merged entity, especially since it has a wider geographic coverage than Dublin City and County.

30. In terms of the classic rock license, the BCI announced in July 2007 that the awarding of this license has been deferred, with an advertisement for the station license due in March 2008. The successful applicant can be expected to be on air in the summer of 2009. It would thus seem, given these time lines, that reliance should not be placed on a future classic rock station as a constraint on the merged entity in the Dublin City and County market within the next two years.

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[9] Switching costs do not appear to be high.

Closeness of Competition

31. Currently UTV owns Q102 which is one of six radio stations licensed to cover the Dublin City and County franchise area. The Authority's investigation in M/07/040, *Communicorp/SRH* found that Q102 is not a close competitor of FM104. This view is supported by evidence from a variety of sources capturing the degree of substitutability among the Dublin City and County radio stations.

Listenership: Reach

32. Advertisers rely on JNLR listenership figures in deciding which radio stations to choose. Radio stations that offer a similar programme format tend to attract a similar audience. As such, stations with a similar listenership profile are seen by advertisers as close competitors or inter-changeable with one another.

33. The Authority used JNLR "listened yesterday" data for Dublin City and County (excluding Phantom which only began broadcasting in October 2006) covering the period June 2006 to July 2007 to establish which Dublin City and County stations can be considered close substitutes or inter-changeable. The result of the Authority's JNLR analysis of this data is presented in Table 2 below. The figures show that Q102 and FM104 are not each other's closest competitor. Depicted in red, except for 35+ year olds, these two stations have dissimilar listenership profiles. In fact, Table 2 shows that FM104's closest competitor is 98FM.

Table 2
Dublin City and County, All Adults, "Listened Yesterday" June 2006 to July 2007

Audience	**Radio Station**					
	FM104	**98FM**	**Spin 103.8**	**Q102**	**CountryMix**	**Other Regional/Local**
Male (%)	20	15	13	8	3	1
Female (%)	23	18	11	11	2	0
15-19 (%)	36	17	56	10	2	-
15-34 (%)	35	22	25	10	1	0
20-44 (%)	27	23	9	14	2	1
35+	**10**	12	2	**10**	4	1
ABC1 (%)	19	13	12	8	3	0
C2DE (%)	23	20	12	12	3	1

Note: Phantom began broadcasting in Dublin on 31 October 2006.
Source: Competition Authority, Determination No. M/07/040, Communicorp/SRH, Table 9, p. 47, based JNLR.

Common Brands

34. If advertisers use two radio stations to advertise particular brands, then it might be reasonable to infer that the two radio stations are close substitutes for each other and hence competitors. The Adscan data in M/07/04, *Communicorp/SRH*, permits the calculation of a measure of the closeness of radio stations based on the number of brands that are common to the two radio stations. This is calculated by counting the number of common brands on any two radio stations divided by the total number of brands advertised on the benchmark radio station.[10] Drawing from that analysis, the Authority found that Q102 and FM104 are not close competitors. The Authority notes that 98FM/Q102 (29.3%) and the FM104/Q102 (29.6%) measures are very similar suggesting that 98FM and FM104 do compete with Q102. In fact, this suggests that 98FM and FM104 face similar competition from Q102. Notwithstanding this, the Authority found that FM104's closest competitor is 98FM.

<u>Authority Survey of Advertising Agencies</u>

35. FM 104 and Q102 are not interchangeable. In its survey of advertising agencies in M/07/040, *Communicorp/SRH*, the Authority sought views on the extent to which advertising on each of the following Dublin City and County radio stations is interchangeable: FM104, 98FM, Spin 103.8, Q102, Phantom FM, and CountryMix 106.8. Only one out of 20 advertising agency expressed the view that FM104 and Q102 are interchangeable.

<u>Monitoring and Benchmarking of Radio Stations</u>

36. Internal documentation requested by the Authority in M/07/040, *Communicorp/SRH*, does not indicate that FM104's closest competitor is Q102. Rather, the internal documents of both FM104 and 98FM showed that each views the other as its closest competitor. For example in a report to Communicorp dated 13 September 2006, 98FM states that its key target is to "beat FM 104".

37. Similarly, in a report prepared by Merrion Finance on behalf of SRH dated June 2007, the former note that "FM 104 and 98 FM are closest competitors for 25-44 year olds, whereas FM104 and Spin FM are the closest competitors for 15-24 year olds". Merrion Finance goes on to state in its report that "FM104 has developed a clear lead over its principal rival 98FM in the Dublin market over the past 2 years".

<u>Cost Per Thousand Analysis</u>

38. In M/07/040, *Communicorp/SRH*, the Authority used Cost Per Thousand ("CPT") as an indicator of closeness to competition. CPT is a measure of media efficiency based on the cost of reaching a thousand people.[11] It 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. It shows efficiency across radio stations and thus allows advertisers to choose the radio station which offers the best value for money. It also gives an indication of the closeness of competition between radio stations, i.e., radio stations in the same franchise area

[10] For example, if radio stations X and Y had 56 common brands (ie advertised on both stations) and the total number of brands advertised on radio station X was 123, then if radio station X was the benchmark radio station, the ratio would be 45.5% (ie 56/123).
[11] It is calculated by dividing the rate card by the number of listeners in a particular demographic multiplied by a thousand.

with similar target audiences and who have similar CPTs are likely to be close competitors.

Table 3
Prime Time Comparisons of Cost per Thousand, Selected Dublin City and County Radio Stations, April 2006-March 2007

Audience and CPT	**Radio Station and Rate Card**		
	98FM (€162)	**FM104 (€160)**	**Q102 (€124)**
Adults	35,000	35,000	17,000
	€4.62	€4.57	€7.29
25-44	21,000	21,000	11,000
	€7.71	€7.61	€11.27
House wives	21,000	19,000	9,000
	€7.71	€8.42	€13.77
Prime Time Comparison of CPT, October 2005 –September 2006			
Audience and CPT	**Radio Station and Rate Card**		
	98FM (€162)	**FM104 (€160)**	**Q102 (€124)**
Adults	33,000	33,000	17,000
	€4.91	€4.84	€7.29
25-44	21,000	19,000	10,000
	€7.71	€8.42	€12.40
House wives	20,000	17,000	10,000
	€8.10	€9.41	€12.40

Source: Competition Authority Determination No. M/07/040, *Communicorp/SRH*, Table 11, p. 50 based on parties internal documents based on the JNLR & radio station rate cards

39. Table 3 above provides the CPT figures for a number radio stations using JNLR figures for two periods "April 2006 to March 2007" and "October 2005 to September 2006". The following inferences can be drawn from the table:

- When compared to Q102's CPT, FM104's CPT is 37% lower.

- The CPTs for 98FM and FM104 are similar across each demographic and are much lower than those of Q102. For example, consider the 2006/2007 CPT figures for "Adult". Therefore, from the perspective of an advertiser, this indicates that both 98FM and FM104 offer better value for money than Q102. Hence Q102 cannot be considered a close substitute for FM104.

Co-ordinated effects

40. There is no record of collusion in the radio advertising market in the State. Nonetheless, given the symmetry in market shares between UTV and Communicorp that will result from the proposed transaction,[12] there might be an incentive for both parties to come to an understanding to engage in co-ordinated interaction. For example, there may be an incentive for Communicorp and UTV to soften price competition between their respective radio stations. The Authority, therefore, considers whether the proposed acquisition is likely to result in co-ordinated effects.

41. Co-ordinated effects is where the proposed acquisition changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will engage in co-ordinated interaction to raise prices or decrease output. Such interaction refers to actions that are profitable only as a result of each firm accommodating the reactions of others. The proposed transaction is unlikely to result in price increases due to co-ordinated effects.

- Drawing on the Authority's *Merger Guidelines* and the requirements for co-ordination identified by the Court of First Instance in the *Airtours*[13] judgment, three conditions are considered:

  (i) Reaching common understanding: relates to establishing a focal point around which to coordinate behaviour. Published rate cards would appear to offer a ready solution, but this is not the case. First, actual prices differ from the rate card due to the fact each radio station negotiates the sale of radio advertising slots with advertising agencies/direct advertisers on a bilateral basis. These prices frequently deviate from the rate card. Second, radio advertising is not a homogeneous product. It differs across a number of dimensions: the time of day when the advertising takes place; the size of the audience; the demographic characteristics of the audience; and, the radio station format. The more heterogeneous the product or service the greater the difficulty of coordination.

  (ii) Detecting cheating: if coordinated behaviour is successful in raising prices then there is an incentive for individual participants to reduce their price thus increasing output. Thus it is important for coordination to be sustainable that such 'cheating' is easy to detect. In the instant case it is hard to detect cheating due to the presence of secret discounts. Further, these discounts are likely to be most prevalent in respect of large agency and client accounts where the incentive to deviate from any agreed price is likely to be highest. In addition, post merger, both Communicorp and UTV will have two radio stations and may bundle radio advertising across their stations making detecting of price reductions even more difficult. Thus, low price transparency (due to pervasive price discounting) will continue to be an important aspect of the competitive process, thereby making it difficult for rivals to detect any

[12] Table 1, Panel B, shows that post merger the market share of Communicorp will be c. 44%, while that of UTV will be c. 48%.

[13] Case T-342/99, *Airtours v Commission* [2002] ECR II-2585.

deviations from a common understanding to lessen competition.

(iii) Effective punishment mechanism: for coordinated behaviour to be successful it is important that there is a punishment mechanism for cheats. However, even if an effective punishment mechanism could be designed[14] the difficulty of reaching a common understanding and detecting cheating suggests that co-ordinated effects are unlikely.

- The proposed acquisition does not involve the elimination of a maverick firm.[15] Such a firm acts as a constraint on coordination. A merger involving a maverick firm is likely to eliminate an aggressive competitor from the market. It is also believed that a merger that does not involve a maverick firm is less likely to result in collusion. If, for example, prices are raised, the maverick firm will increase output thus neutralising the price rise. The CPT analysis, in paragraphs 38 and 39 above, indicate that neither FM104 nor Q102 is a maverick firm. Furthermore it should be remembered that all radio stations are subject to tight limits on the time allowed for advertising so that a maverick radio station might not be in a position to expand output.[16]

Conclusion

42. On the basis of the above analysis, the Authority therefore considers that the proposed transaction does not raise competition concerns in relation to the sale of radio advertising in the State.

Ancillary Restraints

43. The Authority also reviewed restrictive covenants included in the parties' share purchase agreement. In particular, Clause 7.3.1 provides that the Vendor (Communicorp) will not, for a period of two years from completion, solicit the services of certain presenters or senior personnel from FM104. The Authority considers that this restraint is necessary and directly related to the successful implementation of the proposed transaction, within the meaning of section 4(8) and 5(3) of the Act.

Determination

[14] One mechanism might be an expansion of output thus lowering price. However, there are capacity constraints in that each commercial radio station is only entitled to broadcast a maximum of 10 minutes of advertising per hour. Data provided by the BCI, based on monitoring radio stations, shows for the three leading radio stations in Dublin City and County (ie, FM104, 98FM and Q102) – accounting for 85% of the market – that between 07:00 and 19:00 these stations are typically operating between 90 and 100% of capacity. The data relate to a particular day for each radio station during the period March to July 2007.

[15] A maverick firm – is particularly disruptive because it follows a strategy different from other firms in the market – is likely to make it difficult for co-ordinated behaviour because it has a greater incentive to deviate from any agreed strategy to raise prices. For a discussion of the maverick firm see, for example, Baker, J., 2002, "Mavericks, Mergers, and Exclusion: Proving Coordinated Competitive Effects under the Antitrust Laws,' *New York University Law Review* Volume 77, No. !, April, pp. 135-203. This article can be accessed at: http://www.law.nyu.edu/journals/lawreview/issues/vol77/no1/Baker.pdf

[16] See footnote 14 above.

The 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 over Capital Radio Productions Limited and Babstova Limited by UTV Radio (ROI) Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, the acquisition may be put into effect subject to the provisions of section 23(9)(a) of the Act.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority