



# DETERMINATION OF MERGER NOTIFICATION M/17/040 – INDEPENDENT NEWSPAPERS & CALTRAY/OFFSCRIPT (JV)

---

## Section 21 of the Competition Act 2002

### Proposed acquisition by Independent Newspapers (Ireland) Limited and Caltray Limited of joint control of Offscript Studios Limited

Dated 11 October 2017

---

#### Introduction

1. On 10 July 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received notification of a proposed transaction (the “Proposed Transaction”) whereby Independent News & Media Plc (“IN&M”), through its wholly-owned subsidiary Independent Newspapers (Ireland) Limited (“INI”), and Caltray Limited (“Caltray”) (collectively, the “Acquirers”) would acquire joint control of Offscript Studios Limited (the “JV Company”).
2. Following completion of the Proposed Transaction, the JV Company will be operated as a joint venture between the Acquirers.

#### The Proposed Transaction

3. The Proposed Transaction will be implemented by way of a shareholders’ agreement (the “Agreement”) between INI, Caltray, Laurence Bass<sup>1</sup> and the JV Company pursuant to which INI will hold 70% of the issued [voting] share capital of the JV Company with Caltray owning the remaining 30%.<sup>[2]</sup> On 10 July 2017, the parties submitted to the Commission a copy of a heads of agreement (JV term-sheet) between IN&M and Shinawil Productions Limited<sup>3</sup> (“ShinAwil”) dated 15 June 2017 (the “Heads of

---

<sup>1</sup>[...]of the issued share capital of Caltray is owned by Laurence Bass. Laurence Bass also holds 100% of the issued share capital of Shinawil Productions Limited.

<sup>2</sup>[This percentage may increase to [...] based on the performance of the JV Company.]

<sup>3</sup>Shinawil Productions Limited is the former name of Shinawil Limited.



Agreement”). Furthermore, the parties provided a copy of a draft Agreement to the Commission on 17 August 2017. On this basis, the Commission considers that the undertakings involved have demonstrated a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.

4. Following completion of the Proposed Transaction, INI and Caltray will exercise joint control over the JV Company. The Proposed Transaction involves the creation of a joint venture, the JV Company, to perform, on a lasting basis, all the functions of an autonomous economic entity, as provided for in section 16(4) of the Act.

### **The Undertakings Involved**

#### *INI*

5. INI is a wholly-owned subsidiary of IN&M, which is a public limited company incorporated in the State and listed on the Irish and London Stock Exchanges. IN&M is a newspaper and media group which operates on the island of Ireland.<sup>4</sup> In the State, IN&M’s primary business activities include:

- newspaper publishing;
- on-line editorial, i.e., IN&M owns a number of websites which hosts on-line editorial and which distribute/disclose online digital video content for brands/advertising agencies;
- newspaper contract printing; and
- the wholesaling and distribution of newspapers and magazines, i.e., IN&M owns Newsread Limited.

6. The notification states that IN&M does not produce any digital video content for branded advertising, but sells such content as part of a broader media marketing package on an as-required basis to its clients. IN&M currently subcontracts the

---

<sup>4</sup> The Commission described IN&M’s business activities in detail in its merger determination in *M/16/044-INM/CMNL* which can be accessed at:

<https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m16044-inmcmnl/>



production of such digital video content to third parties, such as [...], [...] and [...]<sup>5</sup> and ShinAwiL.

7. For the financial year ending 31 December 2016, IN&M's worldwide turnover was approximately €323.4 million, of which approximately €[...] million was generated in the State.

#### *Caltray*

8. Caltray, a private limited company incorporated in the State, is a non-trading holding company. [...] % of the issued share capital of Caltray is currently owned by Laurence Bass with [...] Catherine Bass. Laurence Bass holds 100% of the issued share capital of ShinAwiL, a production company active in entertainment, live event programming and scripted drama.
9. ShinAwiL has produced television shows such as *The Apprentice*, *Dragon's Den*, *MasterChef Ireland* and *The Voice of Ireland*. ShinAwiL has also created original formats for television shows such as "*Soccastars*" and "*Rising Stars*" which have been licensed to countries in Europe, Asia and the Middle East. ShinAwiL confirmed to the Commission that neither ShinAwiL nor Caltray is involved in a "media business" as defined in section 28A (1) of the Act.<sup>6</sup> The Commission has not uncovered any information that contradicts ShinAwiL's submission.
10. For the financial year ending 31 December 2015, [ShinAwiL]'s worldwide turnover was approximately €[...] million, all of which was generated in the State.<sup>7</sup>

#### *The JV Company*

11. The parties state in the notification: "*The JV will be involved in the business of the production, marketing licensing and sale of online digital video content for branded advertising.*"<sup>8</sup>

---

<sup>5</sup> Sole traders.

<sup>6</sup> By email dated 17 August 2017 to the Commission.

<sup>7</sup> The notification states that Caltray had no turnover worldwide or in the State in the most recent financial year.

<sup>8</sup> Section 2.4 of the Notification form.



12. The Heads of Agreement states that the purpose of the JV Company is to *“Establish a stand-alone digital production house to produce, broadcast, market, and manage the sale, sponsorship, licensing, and distribution of digital content”*. The Acquirers informed the Commission in writing separately on 25 July 2017 and 26 July 2017 that the JV Company’s business will be confined to the production, marketing, licensing and sale of online digital content for branded advertising over the next two years and that the Acquirers have no future plans to expand the JV Company’s business to any other business activity.
13. An internal document<sup>9</sup> provided to the Commission by ShinAwiL entitled *“OffScript Taking story telling seriously”* indicates that the JV Company will originate content and deliver the content through a wide social distribution network.
14. An internal document provided to the Commission by both parties entitled *“Joint Venture Proposal to INM PLC”* dated 23 November 2016 (the “Proposal”) indicates that the JV Company is also planning to operate three online channels on its website. The digital content produced by it will be available to view by users on this website. The Proposal states that *“Where applicable content strands/series will be repackaged and sold via distribution channels to international broadcasters.”*
15. ShinAwiL informed the Commission<sup>10</sup> that the parties envisage the JV Company will [...] to produce, market, license and sell online digital video content both within the State and in the global market. By way of example of a similar type of arrangement entered into by other parties, ShinAwiL referred to the Commission to the RISE Philippines series which was funded by Nike and produced by a UK company.<sup>11</sup>

### **Rationale for the Proposed Transaction**

16. The parties state in the notification:

*“The commercial objective of the Proposed Transaction is to allow each of the undertakings involved, INI and Caltray, to enter the*

---

<sup>9</sup> This document was provided on foot of a formal Requirement for Further Information (“RFI”) served on 18 August 2017 by the Commission on both IN&M and Caltray requesting internal documentation.

<sup>10</sup> Information provided by ShinAwiL on 1 September 2017.

<sup>11</sup> Please see <https://www.youtube.com/watch?v=KUzdebG7A4A>



*market for the business of the production, marketing, licensing and sale of online digital video content for branded advertising.”*

### **Contact with Undertakings Involved**

17. On 18 August 2017, the Commission served a Requirement for Further Information (“RFI”) on each of INI, IN&M and Caltray pursuant to section 20(2) of the Act. This adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1.
18. Upon receipt of all the responses to the RFI from each of INI, IN&M and Caltray, the “appropriate date”<sup>12</sup> (within the meaning of section 19(6)(b)(i) of the Act) became 1 September 2017.
19. During its investigation, the Commission requested and received, on an-ongoing basis, further information and clarifications from the notifying parties.

### **Third Party Submissions**

20. No submission was received.

### **Competitive Analysis**

#### Horizontal Overlap

21. There is no horizontal overlap between IN&M and Caltray in the production and sale/licensing of digital video content for branded advertising in the State. There will be a negligible horizontal overlap between ShinAwiL and the JV Company in the production and sale or licensing of digital video content for branded advertising in the State.
22. Digital video content for advertisement is one type of advertisement format which is distributed through online media networks.<sup>13</sup> Users, particularly younger users, prefer to read or watch online content, the use of which can be controlled by them rather than

---

<sup>12</sup> The appropriate date is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

<sup>13</sup> Other types of advertisement formats include headlines, image or text which is distributed through online media network.



the media owner.<sup>14</sup> Depending on the detail of the arrangements between the brands/advertising agencies and the producer of the digital video content for the brands/advertising agencies, the producer of the digital video content may or may not own the intellectual property right of the digital video content.<sup>15</sup>

23. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, the Commission does not need to come to a definitive view on the precise relevant product market since the parties' involvement in the production of digital video content for advertising is minimal. However, for the purposes of assessing the competitive impact of the Proposed Transaction, the Commission will examine the potential markets for the production, sale/licensing and distribution/disclosure of digital video content for branded advertising in the State.

*The production, sale/licensing and distribution/disclosure of digital video content for branded advertising in the State*

24. ShinAwiL currently produces and sells/licenses digital video content to support its core business of producing television shows such as *Dancing with the Stars* and *The Voice of Ireland*. For the following reasons, the Commission considers that the horizontal overlap between ShinAwiL and the JV Company in the production and sale/licensing of digital video content for branded advertising in the State will not raise any competition concerns:

- ShinAwiL generates minimal revenue in the State (approximately €[...] for 2015 and 2016 in total) from the production and sale/licensing of online digital video content. Most of ShinAwiL's video contents are produced to support own television shows.
- Additionally, post-transaction, the JV Company will continue to face a competitive constraint from competitors in the production and sale/licensing of

---

<sup>13</sup> Through use of the data collected by the services on users and a better knowledge of the viewers, online advertising can improve the targeting of their audiences for an advertisement, thus placing an advertisement on line could be more effective than placing an advertisement on television.

<sup>14</sup> If the producer of the digital video content for advertising owns the digital video content, then it can sell or license the digital video content to brands or to advertising agencies. The brands and advertising agencies can distribute the digital video content according to the license agreement. If the brands or advertising agencies own the digital video contents, then it will be distributed or disclosed according to the brands or advertising agencies' distribution or disclosure strategy.



digital video content for branded advertising in the State. The key competitors are Maximum Media Network Limited, Mashup Media Limited, Motherland Limited, Aertv (Magnet Network Limited) and the Irish Times DAC.

25. The Commission therefore considers that the Proposed Transaction raises no competition concerns in the potential market for the production, sale/licensing and distribution/disclosure of digital video content for branded advertising in the State.

#### Vertical Relationship

26. There is an existing vertical relationship between the Acquirers, whereby IN&M subcontracted the production of two video advertising campaigns to ShinAwil and IN&M is involved in distribution/disclosure of such video contents on its online platform. There is also a potential vertical relationship between IN&M and the JV Company, whereby IN&M could use the JV Company to produce digital video content for IN&M's advertising clients.
27. In its review of the proposed transaction, the Commission assessed whether, post-transaction, IN&M will have the ability and incentive to foreclose its competitors by requiring brands and advertising agencies to only use the JV Company and IN&M online platform in the market for the production, sale/licensing and distribution/disclosure of digital video content for branded advertising in the State.
28. For the following reasons, the Commission considers that the proposed transaction is unlikely to give IN&M the ability and incentive to foreclose its competitors:
- Compared to the 'traditional publisher' for video advertising, i.e., television advertising, digital video content can be distributed/disclosed anywhere online. Figure 1 below provides some examples of where digital video content for branded advertising can be distributed/disclosed online. Advertiser financed on-demand audio-visual services such as user-generated content platforms like YouTube and Dailymotion<sup>16</sup> have seen a tremendous rise in their audiences and are competing more and more with broadcasters and other online channels for

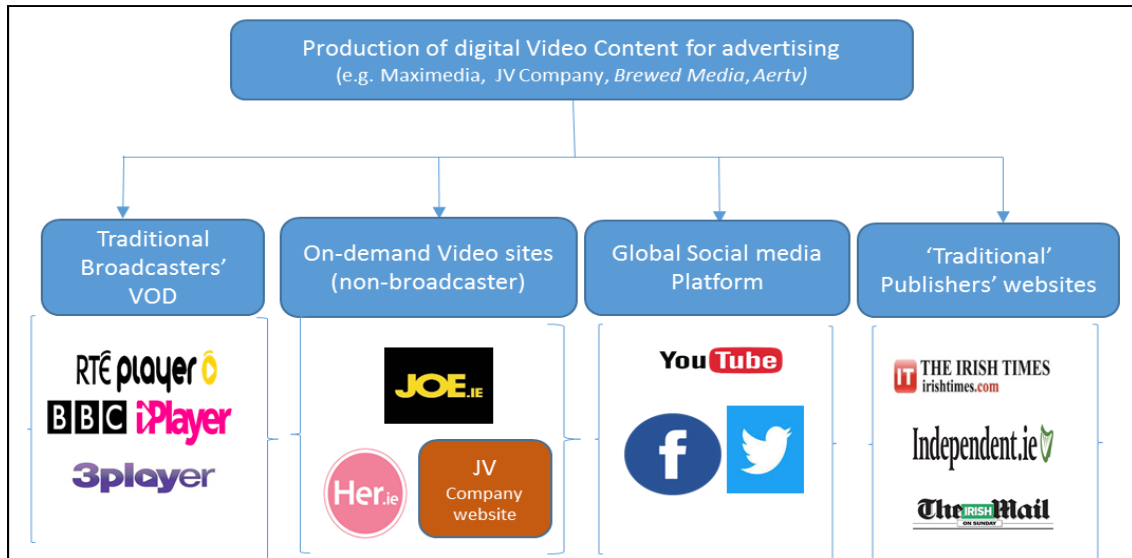
---

<sup>16</sup> <https://www.youtube.com/yt/about/press/> and <http://www.dailymotion.com/us>



brands' and advertising agencies' advertising budgets through the use of digital video content.

Figure 1: Different Categories of digital video “Distribution/Disclosure” online channels



source: the Commission

- IN&M informed the Commission that, in 2016, its total cost of subcontract to third parties to produce digital video content was approximately €[...], of which €[...] was paid to ShinAwil for the production of an online digital video advertising campaign for [...].<sup>17</sup> IN&M informed the Commission that its total cost of subcontracting to, third parties to produce online digital video content for the first seven months of 2017, was approximately €[...] of which €[...] was paid to ShinAwil for the production of an online digital video advertising campaign for the [...]. Although the Commission is not aware of the estimated total value of the business of producing digital video content for branded advertising in the State, the Commission considers that the vertical relationship between IN&M and ShinAwil (€[...] in 2016 and €[...] in 2017) is minimal.
- Post-transaction, the JV Company will continue to face a competitive constraint from the competitors outlined in the second bullet of paragraph 24 in the production and sale/licensing of digital video content for branded advertising

<sup>17</sup>[...] and [...] also produced online digital video content for branded advertising on behalf of IN & M since January 2015.





in the State. In addition, there is a low (or non-existent) barrier for broadcasters such as RTE, TV3, to produce digital video content for branded advertising.

- INM has informed the Commission that “[...]. *As such, INM may continue to trade with the businesses (subcontracting the production of on line digital video content for branded advertising to third parties) if the commercial terms are more favourable or the service superior.*”
- The Commission considers that even if IN&M were to develop a trading relationship with the JV Company, the Proposed Transaction will not give IN&M the ability to force advertisers to stop using competitors of the JV Company. The decision on which company to use to produce digital video content for branded advertising lies mainly with the brand owners and advertising agencies. There are many companies in the State and internationally which compete with IN&M for the advertising budgets of brand owners and advertising agencies for video advertising. If IN&M was to require its clients which are brand owners and advertising agencies to use the JV Company for the production of digital video content to be distributed/disclosed on IN&M’s websites, the brands/advertising agencies could potentially switch to other companies such as RTE Commercial Enterprises DCA, Tv3 Television Network Limited, Irish Times DAC, Maximum Media Network Limited, YouTube and Facebook, which distribute/disclose digital video contents online or non-linear broadcasting channels.

29. In the light of the above, the Commission considers that the Proposed Transaction is unlikely to raise any vertical foreclosure concerns in relation to the market for the production, sale/licensing and distribution/disclosure of digital video content for branded advertising in the State.

## Conclusion

30. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.



Coimisiún um  
Iomaíocht agus  
Cosaint Tomhaltóirí

**Competition and  
Consumer Protection  
Commission**



### **Ancillary Restraints**

31. Clause 3.1 of the draft SA contains restrictive obligations on the parties, in particular non-solicitation obligations. The duration of those restrictive obligations does not exceed the maximum duration acceptable to the Commission. The Commission considers that these restraints are directly related to and necessary for the implementation of the Proposed Transaction.



### **Determination**

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the Proposed Transaction whereby Independent News & Media Plc, through its wholly-owned subsidiary Independent Newspapers (Ireland) Limited, and Caltray Limited would acquire joint control of Offscript Studios Limited, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

**Brian McHugh**  
**Member**  
**Competition and Consumer Protection Commission**