



DETERMINATION OF MERGER NOTIFICATION M/17/012 - KANTAR MEDIA/NEWSACCESS

Section 21 of the Competition Act 2002

Proposed acquisition by Mediawatch Limited trading as Kantar Media (an indirect wholly-owned subsidiary of WPP plc) of Newsaccess Limited

Dated 11 July 2017

Introduction

1. On 9 March 2017, in accordance with section 18(3) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction (“the Proposed Transaction”) whereby Mediawatch Limited trading as Kantar Media (“Kantar Media”), an indirect wholly-owned subsidiary of WPP plc (“WPP”), would acquire the entire issued share capital, and thus sole control, of Newsaccess Limited (“Newsaccess”).

Background

2. The Commission became aware of the Proposed Transaction through its monitoring and compliance activities on 2 February 2017. Information in the possession of the Commission at the time suggested that Kantar Media and Newsaccess were the only two providers of a full spectrum of media monitoring and analysis services in the State. In particular, they were the only two service providers monitoring a wide range of print and broadcast media within the State.
3. The Commission therefore wrote to the parties on 2 February 2017 to enquire whether the Proposed Transaction would be notified to the Commission under Part 3 of the Act. The Commission expressed the view that, even if the Proposed Transaction did not meet the thresholds for a mandatory notification in accordance with section 18(1) of the Act, in light of the information in the Commission’s possession, the parties should consider notifying the Proposed Transaction to the Commission on a voluntary basis under section 18(3) of the Act. The Commission also requested that the parties provide it with copies of all information, documents and analyses relating to the Proposed Transaction.
4. The parties provided the Commission with the information, documents and analyses requested by the Commission but advised the Commission that the Proposed Transaction was not required to be notified to the Commission under section 18(1)(a) of the Act. The parties submitted that in the financial year ending 31 December 2016, which was its most recent financial year, Newsaccess’ turnover in the State was less than €3 million.



5. The Commission also received a number of complaints from third parties, which raised concerns that, post-transaction, Kantar Media would remain as the only provider of a wide range of print and broadcast media monitoring services in the State. Having considered the complaints and having reviewed the information and documentation in the Commission's possession, the Commission reached the preliminary view that the Proposed Transaction could potentially raise competition concerns. The Commission therefore considered that the Proposed Transaction should be reviewed by the Commission in order to assess whether it would substantially lessen competition in any market for goods or services in the State.
6. As a result, on 17 February 2017, the Commission asked the parties to notify the Proposed Transaction to the Commission on a voluntary basis as provided for in section 18(3) of the Act. The Commission at the same time sought undertakings from the parties not to take any further steps towards closing or implementing the Proposed Transaction until such time as the Commission had completed its review of the Proposed Transaction under Part 3 of the Act.
7. On 23 February 2017, the parties wrote to the Commission to set out the steps that had been taken with respect to the implementation of the Proposed Transaction and to agree not to take further steps towards implementing the Proposed Transaction pending the Commission's review of the Proposed Transaction.
8. On 9 March 2017, the parties notified the Proposed Transaction to the Commission under section 18(3) of the Act. The Commission and the parties engaged in further correspondence throughout March and April 2017 regarding the suspension of implementation of the Proposed Transaction during the Commission's review of the Proposed Transaction.

The Proposed Transaction

9. The Proposed Transaction is to be implemented pursuant to a share purchase agreement ("SPA") entered into between Pictavia Holdings Limited and its two main individual shareholders¹ (collectively "the Vendors") and Kantar Media on 1 February 2017. Pursuant to the SPA, Kantar Media would acquire the entire issued share capital, and thus sole control, of Newsaccess.

The Undertakings Involved

Kantar Media

10. Kantar Media, a private company limited by shares registered in the State, is an indirect wholly-owned subsidiary of WPP and provides, what the parties describe as, media intelligence services (namely, multichannel media monitoring and media analysis

¹ William McHugh and Stuart McHugh.



services) in the State. The media channels monitored by Kantar Media include: print media²; broadcast media³; online/digital media⁴, social media⁵ and international media.

11. WPP, through its operating companies, provides a range of marketing communications services such as advertising, media investment management, consultancy, public relations and public affairs. In addition, it owns a wide range of specialised communications companies which operate in such areas as branding and corporate identity, healthcare communications and interactive marketing.
12. For the financial year ending 31 December 2016, WPP's worldwide turnover was approximately £14.4 billion (approximately €17.6 billion), of which approximately \$[...] (approximately €[...]) was generated in the State. For the same period, Kantar Media's worldwide turnover was approximately €[...], of which approximately €[...] related to sales of media intelligence services to clients located within the State.

Newsaccess

13. Newsaccess is a private company limited by shares registered in the State, currently controlled by the Vendors.
14. Newsaccess was founded and launched through a series of acquisitions of other businesses active in the sector, including News Press Clippings (a traditional press cutting agency), News Monitoring Services (an established broadcast media monitor), BusinessWorld.ie (an established business website) and Media Hub (an established media monitoring agency). As such, Newsaccess offers a full range of multichannel media monitoring and evaluation (insight) services in the State. The media channels monitored by Newsaccess include: print media; broadcast media; online media and social media.
15. For the financial year ending 31 December 2016, Newsaccess' worldwide turnover was approximately €[...], the entirety of which was generated in the State.

Rationale for the Proposed Transaction

16. The parties state in the notification:

“The Transaction represents an opportunity for WPP, through its ultimate ownership of Kantar Media Ireland, to create synergies and cost efficiencies between the Parties and will enable the Parties to provide an enhanced offering to their domestic and international client base.

Economies of scale are important in the media intelligence sector and Kantar Media Ireland will reduce Newsaccess' cost base significantly as a result of the Transaction. The Transaction will realise significant cost savings by consolidating a number of duplicated roles, suppliers and functions.

² E.g. National newspapers, regional newspapers, business press and consumer press.

³ E.g. Television and radio.

⁴ E.g. Online news portals.

⁵ E.g. Twitter, Facebook and YouTube.



In addition, the Transaction provides Kantar Media Ireland with upselling opportunities to Newsaccess clients (e.g. in relation to its more sophisticated social media monitoring and analytical tools)."

Extended Phase 1 Investigation

17. The Commission analysed the competitive effects of the Proposed Transaction through an extended Phase 1 investigation which included taking the steps described in paragraphs 18 to 27 below.

Market Enquiries

18. The Commission issued information requests to, and had follow-up meetings and/or telephone discussions with, a number of key existing customers of the parties. The Commission took the same steps with respect to potential and actual competitors of the parties, who may offer some form of media monitoring services in the State.

Contact with Undertakings Involved

19. The Commission had pre-notification meetings with the parties to discuss the Commission's preliminary views of the competitive effects of the Proposed Transaction, based on information in the Commission's possession at that time. On 12 April 2017, members of the Commission's investigative team visited the premises of Newsaccess and met its Chief Executive Officer, Mr Stuart McHugh, to get a first-hand view of Newsaccess' business operations. The Commission's investigative team subsequently met Mr McHugh on 19 April 2017 to discuss the Proposed Transaction in more detail.
20. On 20 April 2017, the Commission issued a formal Requirement for Information ("RFI") to each of Kantar Media and Newsaccess pursuant to section 20(2) of the Act. This automatically suspended the procedure for the Commission's Phase 1 assessment of the Proposed Transaction. Each of Kantar Media and Newsaccess responded to the RFI on 10 May 2017. The issuing of the RFIs adjusted the deadline within which the Commission had to conclude its assessment of the Proposed Transaction in Phase 1. Upon receipt of the responses to the RFIs, the "appropriate date" (as defined in section 19(6)(b) of the Act) for the extended Phase 1 investigation became 10 May 2017.⁶
21. On 28 April 2017, the Commission had a meeting with representatives of Kantar Media, its legal advisors and expert economist [...], who had been retained by the parties as their economics expert. The purpose of the meeting was to discuss the Commission's preliminary views of the competitive effects of the Proposed Transaction and any potential competition concerns identified by the Commission at that stage of its review of the Proposed Transaction. At the meeting, the parties undertook to make additional submissions to the Commission for purposes of seeking to address any potential competition concerns identified by the Commission, including the possibility of submitting proposals to the Commission in accordance with section 20(3) of the Act.

⁶ The "appropriate date" is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.



22. On 3 May 2017, Kantar Media submitted to the Commission proposals regarding measures it would take to ameliorate any effects of the Proposed Transaction on competition in accordance with section 20(3) of the Act. The submission of these proposals by Kantar Media extended the Commission's Phase 1 review period from 30 working days to 45 working days in accordance with section 21(4) of the Act.
23. The Commission engaged with Kantar Media's legal advisors for the purpose of discussing and developing the proposals which Kantar Media submitted to the Commission on 3 May 2017. On 29 June 2017, Kantar Media submitted revised proposals to the Commission in accordance with section 20(3) of the Act. The final set of proposals ("Proposals") were signed on behalf of Kantar Media and submitted to the Commission on 11 July 2017. These Proposals are discussed in more detail in paragraphs 57 to 61 of this Determination.

Third Party Submissions

24. The Commission received a number of submissions and contacts from third parties which raised serious competition concerns over the Proposed Transaction. Third parties were concerned that Newsaccess is the closest and only credible competitor to Kantar Media in the provision of a wide range of print and broadcast media monitoring services in the State. [Third parties argued that] the implementation of the Proposed Transaction will eliminate this only credible and closest competitor from the market [and that] ultimately this would lead to less choice and higher prices for customers purchasing media monitoring services.
25. The Public Relations Institute of Ireland ("PRII"), which is the professional body representing Irish communications and PR practitioners informed the Commission it had received numerous complaints about the Proposed Transaction from its members.⁷ The Proposed Transaction was occurring at a time when Kantar Media was centralising its Irish operations in London. PRII members claimed that they were experiencing a decline in the quality of services provided by Kantar Media and they had difficulty in contacting their relevant (often new) account managers to resolve issues. Members of PRII were particularly concerned that, following implementation of the Proposed Transaction, there would not be any credible alternative service provider to Kantar Media to switch to if Newsaccess were to exit the market as a result of the Proposed Transaction. A particular area of concern was the provision of print and broadcast media monitoring services, as: *"While there are a wide range of alternatives for social and online media, there is nowhere near the same depth in print and broadcast media monitoring, particularly when it comes to Ireland's important regional media."*⁸
26. The Commission has taken into account the competition concerns raised by third parties in its competitive analysis of the Proposed Transaction present the following paragraphs.

⁷ E.g. <http://www.prii.ie/news/march-2017/prii-call-for-full-investigation-by-ccpc-into-acquisition-of-newsaccess-ltd.html>

⁸ <https://www.irishtimes.com/business/media-and-marketing/pr-body-asks-competition-regulators-to-intervene-following-kantar-row-1.3131648>.



Market Testing

27. The Commission conducted a market testing exercise with potential competitors of the parties following the submission of the Proposals by Kantar Media (referred to in paragraphs 57 to 61 below).

Competitive Analysis

Background

28. The provision of media monitoring services primarily involves service providers, such as Kantar Media and Newsaccess, physically monitoring, on behalf of their customers, various media channels (such as print media⁹; broadcast media¹⁰; online media¹¹; and social media¹²) and providing customers with reports, mostly on the basis of relevant keywords. The vast majority of clients purchase print, broadcast and online media monitoring services, with a much smaller number of clients purchasing social media monitoring services and additional evaluation services (i.e. analysis/insight services), which provide summaries and analysis of exposure over certain periods.
29. Kantar Media and Newsaccess are the principal providers of print, broadcast, online and social media monitoring services in the State. They both also provide additional evaluation services to customers in the State.
30. Online media and social media monitoring services can be provided from almost anywhere in the world as the information for both media sources are available online. There are a number of service providers (differing in size) both internationally and in the State, such as *Gorkana (Cision)*¹³, *Meltwater*¹⁴, *Nimms*¹⁵, *Olytico*¹⁶ and *Zenark*¹⁷, who provide online and social media monitoring services to customers in the State. Due to the large number of competitors and the ease of entry, the Commission did not identify any specific competition concerns in this potential narrow segment of the overall market for the provision of media monitoring services and the Commission therefore decided not to consider the provision of online and social media monitoring services further in this Determination.
31. Similarly, the Commission decided not to further examine the provision of additional evaluation services to customers in the State which is a secondary service provided by the parties in the State. No third party raised competition concerns about these services as they are not widely purchased. Therefore, this potential narrow segment of the overall market for the provision of media monitoring services was not considered by the Commission to be of substantial importance that is likely to be impacted by the Proposed Transaction.

⁹ Publications such as newspapers and magazines (both national and regional) and business and consumer press.

¹⁰ Television and radio, both on a national and regional basis.

¹¹ Online news portals, most of which are accessible internationally.

¹² For example, Facebook, Twitter and YouTube, most of which are accessible internationally.

¹³ <http://www.gorkana.com/>.

¹⁴ <https://www.meltwater.com/>.

¹⁵ <http://www.nimms.co.uk/>.

¹⁶ <http://olytico.com/>.

¹⁷ <https://www.zenark.com/>.



Product Market

32. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. The Commission does not need to come to a definitive view on the precise relevant product market in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the precise relevant product market is defined narrowly (i.e., the provision of print and broadcast media monitoring services) or more broadly (i.e., to encompass the provision of a full spectrum of media monitoring services).
33. Customers and competitors state that customers prefer to purchase an “all-in-one” media monitoring service. This approach is corroborated by tender data provided to the Commission by the merging parties. In the parties’ internal documents, it is stated that “*the vast majority of clients take press, broadcast and online monitoring services*”. However, the Commission found that the ability to provide a wide range of both print and broadcast media monitoring services in any given area confers a competitive advantage on a provider of media monitoring services, which suggests that, even for the wider potential product market, it is the print and broadcast media segment that is of foremost strategic importance. In addition, the Commission found that approximately [80-90]% of Newsaccess and [70-80]% of Kantar Media’s respective turnovers in 2016 was generated through the provision of print and broadcast media monitoring services.
34. Therefore, for purposes of assessing the competitive effects of the Proposed Transaction and considering whether it could potentially result in a substantial lessening of competition, the Commission analysed its impact by reference to a narrow potential product market, i.e., the provision of print and broadcast media monitoring services.

Geographic Market

35. The Commission does not need to come to a definitive view on the precise relevant geographic market in this instance, since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant geographic market is defined as national, or wider to encompass both the State and the UK.
36. While there are a few service providers based outside of the State, who provides media monitoring services to customers in the State, mainly from the UK, these service providers, such as *Nimms* and *Gorkana*, are reliant on local service providers in the State as far as it relates print and broadcast monitoring and especially regional print and broadcast monitoring.
37. Customers of media monitoring services in the State are normally interested in national coverage in the media and whether it is a local Irish business or a multinational with local presence, domestic news and coverage of their businesses and/or products nationally is of importance. Media monitoring service providers located in the State therefore possess an advantage over overseas service providers in the provision of print and broadcast media due to the practicalities of monitoring print and broadcast media, such as for example the need to mainly physically gather and scan newspapers every morning. The Commission could not identify any overseas service providers that offered media monitoring services for the full range of print and broadcast media,



specifically including regional print and broadcast media, in the State. In addition, the Commission found that more than [90-100]% of Newsaccess' customers are based in the State.¹⁸

38. Therefore, for purposes of reviewing the competitive effects of the Proposed Transaction and considering whether it could potentially result in a substantial lessening of competition, the Commission analysed its impact by reference to a narrow potential geographic market, i.e., the provision of print and broadcast media monitoring services to customers in the State.

Conclusion on Market Definition

39. Thus, for the purposes of its review of the Proposed Transaction and its potential competitive effects on the market, the Commission has examined the competitive impact of the Proposed Transaction by reference to the potential market for the supply of print and broadcast media monitoring services in the State.
40. The Commission did not, however, need to come to a definitive conclusion on the precise relevant product and geographic markets in this instance, given that Kantar Media submitted Proposals to the Commission for the purpose of ameliorating any effects on competition in markets for goods or services in the State.

Market Structure

41. The Commission's Merger Guidelines¹⁹ ("the Merger Guidelines") state that: "*A central element in assessing the competitive impact of a merger is identifying its effect on market structure.*"²⁰ Market structure can be characterised by the number and size distribution of firms in the relevant market.
42. Submissions made to the Commission by third parties claimed that the Proposed Transaction would reduce the number of service providers with the ability to monitor a full range of print and broadcast media in the State from two to one. This view was shared by some customers of the parties in their response to the Commission's market enquiries.
43. Certain of the parties' own internal documents, which were reviewed by the Commission, state that Kantar Media and Newsaccess are [...] in the State.
44. As part of their responses to the RFI, the merging parties submitted data on the tenders for the supply of print and broadcast media monitoring services in which both parties had participated over the period from 2012 to 2017. This data showed that the parties serve a large share of the print and broadcast media monitoring market, collectively winning [...] of the [...] tenders in which they participated during the aforementioned period for which either print or broadcast media monitoring services were specified.
45. As part of their responses to the RFI, the parties were asked to identify their closest competitors in the supply of media monitoring services in the State. The Commission

¹⁸ *Gorkana* is one of Newsaccess' top ten customers but is based outside of the State, in the UK.

¹⁹ Guidelines for Merger Analysis, adopted by the Commission on 31 October 2014.

²⁰ See paragraph 3.1 of the Merger Guidelines.



found that the closest competitor of Kantar Media is Newsaccess. Except for *Nimms* and *Gorkana*, it could not confirm that any of the competitors named by the parties were active in the supply of both print and broadcast media monitoring services in the State. In fact, the Commission found that Newsaccess was the provider of media monitoring services for Irish print titles to both *Nimms* and *Gorkana*. Therefore, the Commission considered that the ability of these two service providers, which are the only other competitors currently offering print media monitoring services in the State, to compete would be reduced post-transaction.

46. On the basis of the views of third parties and customers of the parties, the merging parties' own internal documents and market data obtained by the Commission, the Commission formed the preliminary view that the Proposed Transaction would likely result in a substantial increase in concentration in the supply of print and broadcast media monitoring services in the State, as it would bring together the two largest and closest print and broadcast media monitoring service providers in the State.

Theories of harm

Horizontal Unilateral Effects

47. According to the Merger Guidelines, unilateral effects occur *“when a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors.”*²¹
48. The Merger Guidelines further state that the *“incentive to increase prices arises whenever the merged entity can increase profits by doing so.”*²² The reference to increasing prices can be interpreted as raising prices and/or any reduction in quality or service as a result of a loss of competition post-merger. The Merger Guidelines emphasise that central to such analysis is whether competitive pressures *“will be weaker to the extent that (i) there is an absence of substantial competition from other firms in the market or firms likely to enter in a timely manner”*²³.
49. The Commission considers that, in the absence of new firms entering the market, the merged entity would have the **ability** to raise prices for the provision of print and broadcast media monitoring services in the State following implementation of the Proposed Transaction. The Proposed Transaction would combine the only two active providers of a full range of print and broadcast media monitoring services in the State, leaving no significant competitor to constrain the merged entity's activities in the provision of those specific services. Given the reliance of the majority of customers in the State on print and broadcast media monitoring services, and the evidence from tendering data provided to the Commission, that Newsaccess competed strongly with Kantar Media for the supply of print and broadcast media monitoring services, the Commission has concluded that the merged entity would have the ability to increase prices above their current levels.

²¹ See paragraph 4.8 of the Merger Guidelines.

²² See paragraph 4.10 of the Merger Guidelines.

²³ See paragraph 4.11 of the Merger Guidelines.



50. The Commission further considers that, in the absence of new firms entering the market, the merged entity would also have a strong *incentive* to exercise its ability to increase prices. An incentive to increase prices arises if it would be profitable for the merged entity to do so. The profitability of a price increase post-merger is determined by whether the margin gained from the increased prices paid by remaining customers of the merged entity is greater than the loss of profit from customers that switch away from the merged entity in response to the price increase. As the Proposed Transaction would eliminate the closest and most substantial competitor of Kantar Media in print and broadcast media monitoring services in the State, i.e., Newsaccess, customers would have no alternative service provider to switch to in the event of a price increase by Kantar Media following implementation of the Proposed Transaction. A customer in the State would therefore either have to accept a price increase by Kantar Media or make do without the full range of print and broadcast media monitoring services. Prices for media monitoring services are usually negotiated on a bilateral basis with each individual customer. The merged entity could therefore increase prices for individual customers subject to their particular need for print and broadcast media monitoring services and their willingness to pay for such services, further minimising any resulting loss in profit from a loss of customers as a result of the price increase.
51. Certain of Kantar Media's internal documents assessing the purchase of Newsaccess, [...] as part of the strategic rationale for the Proposed Transaction.
52. The Commission believes therefore that, absent any new entry, the Proposed Transaction could result in horizontal unilateral effects occurring, as the merged entity would have both the ability and incentive to increase prices.

Barriers to Entry

53. Where it is likely that the other firms within a particular market would be unable to prevent a price rise by the merged entity, the Commission examines whether or not entry into that market by new firms would constrain such a price rise. The Commission's Merger Guidelines state that *"in assessing whether new entry will prevent an SLC, the Commission will consider whether such entry would be: (a) Timely, (b) Likely, and (c) Sufficient."*²⁴ Each of these three conditions has to be satisfied. Critical to determining whether these conditions are satisfied is the ease of market entry and expansion.
54. The Commission's investigation also considered whether there were any barriers to entry that could compromise the likelihood of entry that is both timely and sufficient. In cases where entry is of central importance to the competitive assessment, the Commission examines the potential for the merged entity to impede the entry or expansion of competitors that would otherwise act as a competitive constraint. The European Commission's guidance on horizontal mergers states that such mergers can result in anti-competitive effects *"by leaving the merged firm in a position where it would have the ability and incentive to make the expansion of smaller firms and potential competitors more difficult or otherwise restrict the ability of rival firms to compete. In such a case, competitors may not, either individually or in the aggregate,*

²⁴ See paragraph 6.4 of the Merger Guidelines.



be in a position to constrain the merged entity to such a degree that it would not increase prices or take other actions detrimental to competition.”²⁵

55. When conducting its assessment of the competitive effects of Proposed Transaction, the Commission was concerned that, without binding commitments from Kantar Media, potential new entry could be hampered by:
- a) contractual obligations on former Newsaccess staff which prevent them from being employed by another provider of media monitoring services in the State, thus preventing potential new entrants from acquiring experienced staff;
 - b) the difficulty and expense of acquiring the necessary equipment for the provision of print and broadcast media monitoring services, thus delaying timely entry;
 - c) Kantar Media seeking to renegotiate contracts with Newsaccess’ customers, gaining more favourable terms due to the lack of alternative service providers and perhaps even tying them into longer term contracts; and
 - d) Newsaccess’ customers on long-term contracts being precluded from switching to any new service provider.
56. Should any of the above factors prevent or delay entry that is timely, likely or sufficient, the Proposed Transaction could be expected to result in a substantial lessening of competition, leaving the merged entity with the ability and incentive to increase prices due to a lack of alternative sources of supply. The Commission was of the preliminary view that all of the above factors were present in the current matter, and that the Proposed Transaction may therefore raise significant competition concerns. The Commission did not, however, have to reach a definitive position on this particular aspect of the assessment of the Proposed Transaction since Kantar Media submitted Proposals to the Commission which would address the competition concerns raised by the Proposed Transaction. In essence, the proposals had the potential to replace the competition that would have been lost as a result of the Proposed Transaction in the potential market for the provision of print and broadcast media monitoring services.

Proposals submitted by Kantar Media

57. On 11 July 2017, Kantar Media submitted Proposals to the Commission under section 20(3) of the Act for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services in the State. In particular, Kantar Media committed:
- a. to sell to a prospective new entrant into the market all scanners, computers, servers, printers and related equipment owned and used by Newsaccess in the monitoring of print and broadcast media (“Newsaccess Fixed Assets”);
 - b. to offer a specified number of customers of Newsaccess on fixed term contracts the option to be released from the remainder of their contracts in order to facilitate market entry by the purchaser of the Newsaccess Fixed Assets referred to in part a) above;

²⁵ European Commission “Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings”, at paragraph 36.



- c. to procure that Newsaccess will not unilaterally amend or vary the prices agreed between Newsaccess and customers of Newsaccess (including any Contract Customer) for the provision of print or broadcast media monitoring services prior to the termination of the customer's contract; and
 - d. not to enforce any contractual obligation on current or former staff of Newsaccess, excluding its directors and shareholders, which would prevent such staff from working for another provider of media monitoring services in the State.
58. The Commission market-tested the Proposals submitted by Kantar Media with potential new entrants into the potential market for the provision of print and broadcast media monitoring services. The responses to the Commission's market-testing exercise suggested that the Proposals were adequate to facilitate entry, which is both timely and likely, into the potential market for print and broadcast media monitoring services.
59. The Commission is of the view that such entry is also likely to be sufficient considering the responses of customers to the Commission's market enquiries showed a willingness to consider alternative service providers, with customers having switched providers in the past.
60. The Commission considered the Proposals submitted by Kantar Media to also address the competition concerns raised by third parties, as mentioned in paragraphs 24 and 25 of this Determination. The Commission therefore, having taken the Proposals submitted by Kantar Media on 11 July 2017 into account, is of the view that they are sufficient to address the competition concerns arising from the Proposed Transaction in the potential market for the provision of print and broadcast media monitoring services in the State, as identified by the Commission.
61. 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. In accordance with section 20(3) and section 26(1) and section 26(4) of the Act, the Proposals submitted by Kantar Media on 11 July 2017 form part of the basis of this Determination and accordingly have become commitments binding upon Kantar Media. The Proposals are set out in full at the end of this Determination.

Ancillary Restraints

The SPA contains a number of restrictive obligations on the Vendors. These include non-compete and non-solicitation clauses. The duration of these restrictive obligations does not exceed the maximum duration acceptable to the Commission.²⁶ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction as far as they relate to the State.

²⁶ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN).



Determination

Pursuant to section 20(3) of the Competition Act 2002, as amended (“the Act”), Mediawatch Limited trading as Kantar Media (“Kantar Media”) has submitted to the Competition and Consumer Protection Commission (“the Commission”) the Proposals set out below relating to the proposed acquisition by Kantar Media of the entire issued share capital and thus sole control of Newsaccess Limited (“Newsaccess”), for the purpose of ameliorating any effects on competition in markets for goods or services, with a view to the proposals becoming binding on Kantar Media.

The Commission has taken the Proposals into account and in light of the said Proposals (which form part of the basis of its Determination) has determined, in accordance with section 21(2)(a) of the Act, that the result of the proposed acquisition whereby Kantar Media would acquire sole control of Newsaccess 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

Patrick Kenny
Member
Competition and Consumer Protection Commission



PROPOSALS BY KANTAR MEDIA TO THE COMMISSION RELATING TO THE PROPOSED ACQUISITION OF NEWSACCESS (“Proposals”)

RECITALS

- a) On 09 March 2017, the proposed acquisition by Kantar Media of the entire issued share capital and thus sole control of Newsaccess was notified to the Commission under section 18(3) of the Act.
- b) Pursuant to section 20(3) of the Act, Kantar Media has submitted to the Commission Proposals relating to the Proposed Transaction for the purpose of ameliorating any effects of the Proposed Transaction on competition in markets for goods or services, with a view to the Proposals becoming binding on Kantar Media.
- c) The Proposals submitted by Kantar Media are aimed at replacing the competition that would have been lost as a result of the Proposed Transaction in the potential market for the provision of media monitoring services (print and broadcast) in the State.

A. Definitions

1. For the purpose of the Proposals, the following terms shall have the following meaning:

“**Act**” means the Competition Act 2002, as amended;

“**Archive Commitment**” means the commitment outlined at paragraph 11 of these Proposals;

“**Archive Facility**” means a repository of the media content that has been provided to a Customer by Newsaccess during the period up to and including the 30th of April 2017, in accordance with such Customer’s current contract with Newsaccess for the provision of a Media Monitoring Service;

“**Commencement Date**” means the date of the Commission's Determination;

“**Commission**” means the Competition and Consumer Protection Commission and its successors;

“**Contract Customer**” means any person or business which (a) was a customer of Newsaccess on the Commencement Date; and (b) was receiving a Media Monitoring Service from Newsaccess pursuant to a fixed term contract with Newsaccess on the Commencement Date;

“**Customer**” means any person or business which was a customer of Newsaccess on the Commencement Date;

“**Determination**” means the Determination of the Commission pursuant to section 21(2)(a) of the Act that the Proposed Transaction may be put into effect;



“Divestment Commitment” means the commitment outlined at paragraphs 2 to 5 of these Proposals;

“Kantar Media” means Mediawatch Limited, a private limited company, incorporated under the laws of Ireland (Registration No. 352153), which trades as Kantar Media and has its registered address at 1st Floor Marina House, Block V East, Eastpoint Business Park, Dublin 3;

“Media Monitoring Service” means the monitoring of press and broadcast media content in the State and providing clients with access to such content and/or analysis thereof;

“Merger Notification Commitment” means the commitment outlined at paragraph 13 of these Proposals;

“Newsaccess” means Newsaccess Limited, a private limited company, incorporated under the laws of Ireland (Registration No. 123007), which has its registered address at 1st Floor Marina House, Block V East, Eastpoint Business Park, Dublin 3;

“Newsaccess Fixed Assets” means all scanners, computers, servers, printers and related equipment owned by Newsaccess and used by Newsaccess to provide a Media Monitoring Services up to and including the 9th of March 2017;

“NLI Archive Licence” means a licence issued by Newspaper Licensing Ireland (NLI) that a customer is required to have if such customer requires its media monitoring service provider to maintain an archive of media content for over 30 days on the customer’s behalf;

“Pricing Commitment” means the commitment outlined at paragraph 9 of these Proposals;

“Proposed Transaction” means the proposed acquisition by Kantar Media of the entire issued share capital and thus sole control of Newsaccess, pursuant to a share purchase agreement between Kantar Media, Pictavia Holdings Limited, William McHugh and Stuart McHugh dated 01 February 2017, which was notified to the Commission pursuant to section 18(3) of the Act on 09 March 2017;

“Termination Date” means (a) for a Contract Customer, the date on which such Contract Customer's current fixed term contract with Newsaccess expires, or the date falling 12 months after the Commencement Date, whichever is the later; or (b) for a Customer which has a rolling contract with Newsaccess which is terminable on 30 days’ notice, the date falling 12 months after the Commencement Date;

“Purchaser” means a third party purchaser of the Newsaccess Fixed Assets which were required to be divested by Kantar Media pursuant to these Proposals and approved by the Commission; and



"**Staffing Commitment**" means the commitment outlined at paragraph 8 of these Proposals.

B. Undertakings by Kantar Media

Divestment Commitment

2. Kantar Media undertook to divest the Newsaccess Fixed Assets prior to the date of the Determination and the following has occurred:
 - (i) On 28 June 2017, Newsaccess entered into a final binding sale and purchase agreement with the Purchaser for the sale of the Newsaccess Fixed Assets to the Purchaser. The Purchaser is (a) currently providing or is intending to provide a Media Monitoring Service to customers based in the State; and (b) unconnected to and independent of each of Kantar Media and Newsaccess.
 - (ii) The sale and purchase agreement between Newsaccess and the Purchaser for the sale of the Newsaccess Fixed Assets to the Purchaser has been entered into upon terms which the Commission considered to be appropriate for the purposes of the Proposals.
3. In addition to the divestment of the Newsaccess Fixed Assets, as set out above, in order to facilitate market entry by the Purchaser, Kantar Media, with agreement from the Commission, has identified [...] Contract Customers of Newsaccess (each a "**Selected Contract Customer**") who may be released from the remaining term of their fixed term contract in accordance with paragraph 4 of these Proposals. As such, Kantar Media undertakes to procure that Newsaccess will distribute, on a once off basis, advertising material on behalf of the Purchaser to each of the Selected Contract Customers of Newsaccess. Kantar Media shall procure the distribution by Newsaccess of such advertising material to each of the Selected Contract Customers within fourteen (14) days of the receipt by Newsaccess of the advertising material from the Purchaser.
4. In the event that any of the Selected Contract Customers of Newsaccess which are referenced in paragraph 3 of these Proposals notifies Newsaccess of its decision to obtain a Media Monitoring Service from the Purchaser within one (1) month of receiving the advertising material from Newsaccess on behalf of the Purchaser, Kantar Media undertakes that it will procure that Newsaccess will: (a) release such Selected Contract Customer from the remainder of the term of its contract with Newsaccess; and (b) apply a notice period of no longer than thirty (30) days in respect of the termination of the Selected Contract Customer's contract with Newsaccess.
5. Kantar Media further undertakes that, for a period of twelve (12) months from the date of release of any Selected Contract Customer from their fixed term contract in accordance with paragraph 4 of these Proposals, neither Kantar Media nor Newsaccess will actively canvass or solicit any Selected Contract Customer of Newsaccess which decides to obtain a Media Monitoring Service from the Purchaser in accordance with



paragraph 4 of these Proposals. For the avoidance of doubt, during the twelve (12) month period referred to in this paragraph 5, nothing in these Proposals shall prevent Kantar Media or Newsaccess from providing a Media Monitoring Service to any Selected Contract Customer referenced in paragraphs 3, 4 and 5 of these Proposals in response to an unsolicited request to Kantar Media or Newsaccess from such Selected Contract Customer for the provision of a Media Monitoring Service provided that there has been no canvassing or solicitation of such Selected Contract Customer by either Kantar Media or Newsaccess.

6. Within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform the Purchaser of the commitment given in paragraphs 2 to 5 of these Proposals (the **Divestment Commitment**). In addition, within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform the Purchaser that the Purchaser should immediately notify Kantar Media in writing if the Purchaser perceives that Kantar Media and/or Newsaccess has committed a breach of the Divestment Commitment. Upon receipt of a notification from the Purchaser that Kantar Media and/or Newsaccess has committed a breach of the Divestment Commitment, if Kantar Media accepts that there has been a breach of the Divestment Commitment by Kantar Media and/or Newsaccess, Kantar Media shall take such steps as are necessary to rectify the breach within fourteen (14) days of being notified of such breach by the Purchaser. If, within fourteen (14) days of being notified of the breach by the Purchaser, Kantar Media does not accept that Kantar Media and/or Newsaccess has committed a breach of the Divestment Commitment, Kantar Media shall inform the Purchaser that the Purchaser has the right to inform the Commission of such perceived breach of the Divestment Commitment. Upon receipt of a notification from the Purchaser that Kantar Media and/or Newsaccess has committed a breach of the Divestment Commitment, the Commission shall be entitled to take such steps as it considers appropriate, including issuing directions under paragraph 16 of these Proposals.
7. Kantar Media shall procure that Newsaccess will inform each Selected Contract Customer that notifies Newsaccess of its decision to obtain a Media Monitoring Service from the Purchaser (in accordance with paragraph 4 of these Proposals) of Newsaccess' obligations as set out in paragraphs 4 and 5 of these Proposals. In addition, within fourteen (14) days of receiving such notification from a Selected Contract Customer, Kantar Media shall procure that Newsaccess will inform such Selected Contract Customer that the Selected Contract Customer should immediately notify Kantar Media in writing if the Selected Contract Customer perceives that Kantar Media and/or Newsaccess has committed a breach of Kantar Media's and/or Newsaccess' obligations as set out in paragraphs 4 and 5 of these Proposals. Upon receipt of a notification from a Selected Contract Customer that Kantar Media and/or Newsaccess has committed a breach of the obligations as set out in paragraphs 4 and 5 of these Proposals, if Kantar Media Ireland accepts that there has been a breach of the obligations as set out in paragraphs 4 and 5 of these Proposals by Kantar Media and/or Newsaccess, Kantar Media shall take such steps as are necessary to rectify the breach within fourteen (14) days of being notified of such breach by the Selected Contract Customer. If, within



fourteen (14) days of being notified of the breach by the Selected Contract Customer, Kantar Media does not accept that Kantar Media and/or Newsaccess has committed a breach of the obligations as set out in paragraphs 4 and 5 of these Proposals, Kantar Media shall inform the Selected Contract Customer that the Selected Contract Customer has the right to inform the Commission of such perceived breach of the obligations as set out in paragraphs 4 and 5 of these Proposals. Upon receipt of a notification from a Selected Contract Customer that Kantar Media and/or Newsaccess has committed a breach the obligations as set out in paragraphs 4 and 5 of these Proposals, the Commission shall be entitled to take such steps as it considers appropriate, including issuing directions under paragraph 16 of these Proposals.

Staffing Commitment

8. Kantar Media undertakes to procure that Newsaccess will not enforce, or seek to enforce, any covenants restricting any former employee or member of staff of Newsaccess from being employed by a business which is currently providing or is intending to provide a Media Monitoring Service in the State, unless such staff member was a director of or shareholder in Newsaccess. For the avoidance of doubt, this paragraph 8 does not prevent Newsaccess from enforcing: (i) any confidentiality obligations imposed on any former employee or staff member of Newsaccess in respect of Newsaccess confidential information and (ii) any non-solicit obligations in respect of any former employee or member of staff of Newsaccess.

Pricing Commitment

9. Kantar Media undertakes to procure that Newsaccess will not unilaterally amend or vary, or seek to amend or vary, the prices agreed between Newsaccess and any Customer (including any Contract Customer) for the provision of a Media Monitoring Service by Newsaccess to such Customer prior to the Termination Date. For the avoidance of doubt, if Kantar Media or Newsaccess enters into a new fixed term contract with any Customer prior to 12 months from the Commencement Date, the Pricing Commitment as outlined in this paragraph 9 shall only apply for the period of twelve (12) months from the Commencement Date.
10. Within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform each Customer (including each Contract Customer) of the commitment given in paragraph 9 of these Proposals (the **Pricing Commitment**). In addition, within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform each Customer (including each Contract Customer) that the Customer should immediately notify Kantar Media in writing if the Customer perceives that Kantar Media and/or Newsaccess has committed a breach of the Pricing Commitment. Upon receipt of a notification from a Customer that Kantar Media and/or Newsaccess has committed a breach of the Pricing Commitment, if Kantar Media accepts that there has been a breach of the Pricing Commitment by Kantar Media and/or Newsaccess, Kantar Media shall take such steps as are necessary to rectify the breach within fourteen (14) days of being notified of such breach by the Customer. If, within fourteen (14) days of being notified of the breach by the Customer, Kantar Media



does not accept that Kantar Media and/or Newsaccess has committed a breach of the Pricing Commitment, Kantar Media shall inform the Customer that the Customer has the right to inform the Commission of such perceived breach of the Pricing Commitment. Upon receipt of a notification from a Customer that Kantar Media and/or Newsaccess has committed a breach of the Pricing Commitment, the Commission shall be entitled to take such steps as it considers appropriate, including issuing directions under paragraph 16 of these Proposals.

Archive Commitment

11. Kantar Media undertakes to procure that Newsaccess will continue to support Customers (including Contract Customers) in accessing and downloading media content through the Customer's Archive Facility up to and including 30 September 2017, in accordance with the following conditions:-

- a) In respect of a Contract Customer, Kantar Media undertakes to procure that the Contract Customer's Archive Facility and a copy of the media content provided by Newsaccess to the Contract Customer shall be made accessible by Newsaccess to the Contract Customer by means of access to the Contract Customer's Archive Facility at no additional cost to the Contract Customer provided that the Contract Customer is in possession of a valid NLI Archive Licence in respect of such archived media content;
- b) In respect of a Customer which has a rolling contract with Newsaccess, Kantar Media undertakes to procure that the Customer's Archive Facility and the media content provided by Newsaccess to the Customer shall be made accessible by Newsaccess to the Customer by means of access to the Customer's Archive Facility at no additional cost to the Customer provided that the Customer is in possession of a valid NLI Archive Licence in respect of such archived media content; and
- c) Within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess shall (i) inform each Customer (including Contract Customers) of the commitment outlined in this paragraph 11 (the **Archive Commitment**); and (ii) publish details of the Archive Commitment on the website of Newsaccess and shall procure that details of the Archive Commitment are maintained on that website for a period of one (1) month thereafter.

12. In addition, within fourteen (14) days of the Commencement Date, Kantar Media shall procure that Newsaccess will inform each Customer (including Contract Customers) that the Customer should immediately notify Kantar Media in writing if the Customer perceives that Kantar Media and/or Newsaccess has committed a breach of the Archive Commitment. Upon receipt of a notification from a Customer that Kantar Media and/or Newsaccess has committed a breach of the Archive Commitment, if Kantar Media accepts that there has been a breach of the Archive Commitment by Kantar Media



and/or Newsaccess, Kantar Media shall take such steps as are necessary to rectify the breach within fourteen (14) days of being notified of such breach by the Customer. If, within fourteen (14) days of being notified of the breach by the Customer, Kantar Media does not accept that Kantar Media and/or Newsaccess has committed a breach of the Archive Commitment, Kantar Media shall inform the Customer that the Customer has the right to inform the Commission of such perceived breach of the Archive Commitment. Upon receipt of a notification from a Customer that Kantar Media and/or Newsaccess has committed a breach of the Archive Commitment, the Commission shall be entitled to take such steps as it considers appropriate, including issuing directions under paragraph 16 of these Proposals.

Merger Notification Commitment

13. For a period of two years after the Commencement Date, Kantar Media undertakes to inform the Commission of any proposed merger or acquisition by, or involving, Kantar Media of an undertaking involved in the provision of a Media Monitoring Service in the State which would not otherwise be notifiable to the Commission under Part 3 of the Act, or to the European Commission under Council Regulation (EC) No 139/2004 on the Control of Concentrations between Undertakings. In addition, Kantar Media shall, if required to do so by the Commission, notify any such proposed merger or acquisition in accordance with section 18(3) of the Act (or its successor provision, if applicable) if such proposed merger or acquisition is not required to be notified under section 18(1) of the Act (or its successor provision, if applicable).

C. Compliance

14. Kantar Media shall submit to the Commission within six (6) months of the Commencement Date, and, at intervals of six (6) months thereafter until the expiry of two (2) years after the Commencement Date, a written certificate in the form set out in the Schedule hereto (a “**Compliance Certificate**”), signed by the Managing Director of Kantar Media confirming that Kantar Media has complied with its obligations set out in these Proposals in the preceding six (6) month period. Such Compliance Certificates shall also include details of any instance in the preceding six (6) month period where a breach of the Proposals has been notified to Kantar Media by the Purchaser or by a Customer and any steps taken by Kantar Media to rectify any such breach.
15. The Commission reserves the right to require Kantar Media to provide to the Commission, at any time, such additional information as the Commission requires in order for the Commission to verify Kantar Media’s compliance with its obligations set out in these Proposals. Kantar Media shall promptly provide to the Commission such information.
16. The Commission may provide written directions to Kantar Media from time to time to require compliance with these Proposals. Kantar Media shall comply promptly with any written directions issued by the Commission pursuant to these Proposals.



17. Kantar Media shall appoint a compliance director who will have responsibility for monitoring compliance with these Proposals and for responding to any requests for information received from the Commission in connection with these Proposals.
18. These Proposals will come into effect on the Commencement Date and will remain in force until the expiry of two (2) years after the Commencement Date.
19. In response to a reasoned request from Kantar Media, the Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals. At any time, subject to providing Kantar Media 30 days written notice and an opportunity for Kantar Media to provide a written submission to the Commission, the Commission may at its sole discretion waive, modify, or substitute any provision in these Proposals.

Dated 11 July 2017

SIGNED for and on behalf of

MEDIAWATCH LIMITED, TRADING AS KANTAR MEDIA, by its truly authorised representative

By: _____



SCHEDULE TO THE PROPOSALS

[Kantar Media Headed Paper]

*[date]*²⁷

Ibrahim Bah
Director
Competition Enforcement and Mergers Division
Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

Merger Notification M/17/012 Mediawatch Limited trading as Kantar Media (“Kantar Media”) / Newsaccess Limited (“Newsaccess”)

Dear Mr. Bah,

I refer to Merger Notification M/17/012 in relation to the acquisition by Kantar Media of the entire issued share capital and thus sole control of Newsaccess, which was notified to the Competition and Consumer Protection Commission (“Commission”) on 09 March 2017 (“the Proposed Transaction”).

The Commission issued its Determination approving the Proposed Transaction on [] July 2017.

In accordance with the terms of the proposals given by Kantar Media to the Commission on [] July 2017 in relation to the Proposed Transaction which, in accordance with section 20(3), section 26(1) and section 26(4) of the Competition Act 2002, as amended, have become commitments binding upon Kantar Media (“the Commitments”), I hereby confirm Kantar Media’s compliance with the terms of the Commitments during the period commencing on [the date of the Determination] / [date of the previous certificate issued by Kantar Media] and ending on the date hereof.

Yours faithfully,

[Name]

MD

Mediawatch Limited trading as Kantar Media

²⁷ This certificate should be dated and issued to the Competition and Consumer Protection Commission within six (6) months of the date of the Determination and, thereafter, within six (6) months after the date of submission of the first certificate issued to the Competition and Consumer Protection Commission and at intervals of six (6) months thereafter.