



DETERMINATION OF MERGER NOTIFICATION M/11/039 - TDL/Danu/Setanta

Section 21 of the Competition Act 2002

Proposed acquisition by Michael O'Rourke through TDL Media Limited of Setanta Sports Broadcasting Limited

Dated 6 January 2012

Introduction

1. On 12 December 2011, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed transaction whereby Michael O'Rourke would, through his company TDL Media Limited ("TDL"), acquire sole control of Setanta Sports Broadcasting Limited ("Setanta Sports Broadcasting").
2. Michael O'Rourke, through TDL, would acquire sole control of Setanta Sports Broadcasting subsequent to the completion of two related transactions. First Danu Capital Partners Limited ("Danu"), [...], will acquire 99.94% of the issued capital, and thereby sole control, of Setanta Sports Broadcasting. [...].¹ Second, TDL, which is 100% owned by Mr O'Rourke, will acquire the combined shareholding (62.5%) in Danu of Messrs Mark O'Meara and Leonard Ryan. The remaining 37.5% share in Danu will remain with Mr O'Rourke.² Consequently Mr O'Rourke, individually and as sole shareholder of TDL, will acquire 100% ownership of Danu.
3. On 12 December 2011, the Authority forwarded a copy of the notification to the Minister, and notified the undertakings involved that it considered the proposed transaction to be a media merger within the meaning of section 23(1) of the Act.

¹ [...].

² [...].

The Undertakings Involved

Acquirer

Michael O'Rourke

4. Michael O'Rourke, one of the original founders of the Setanta Sports Group³ is a private individual who owns 100% of TDL. TDL was incorporated in Ireland on 4 August 2010 as an acquisition vehicle and has not traded since incorporation. As described below, Mr O'Rourke currently has a 37.5% shareholding in Danu.
5. In addition to his shareholding in Danu, and unrelated to the proposed transaction, Michael O'Rourke has a 50% shareholding in Setanta Radio Limited ("Setanta Radio")⁴, a non-trading holding company with minority interests in two Irish radio stations: Newstalk 106 Limited (17.6%) and CK Broadcasting Limited (12.5%).⁵
6. Michael O'Rourke is not involved in any other media business in the State.

Targets

Danu

7. Danu is currently owned by Michael O'Rourke, Leonard Ryan, who is also an original founder of the Setanta Sports Group, and Mark O'Meara,⁶ who was previously Chief Operations Officer of Setanta Sports Holdings Limited.⁷
8. Danu provides sports media and media management services. These services which include financial, legal and human resource advice and IT services, enable the broadcasting of sports programmes. Danu's wholly owned subsidiary MLM Management Limited ("MLM") provides similar services. Danu and MLM both provide their services primarily to Setanta Sports Broadcasting and also, to a limited degree, to other customers.⁸
9. Danu currently has a 40% interest in Setanta Sports Broadcasting. This is comprised of (i) a direct shareholding of 24%, and (ii) an indirect 16% shareholding via its wholly owned subsidiary MLM.

³ The Setanta Sports Group comprises Setanta Sports Broadcasting Limited, Setanta Sports Channel Ireland Limited, Setanta Sports Hibernia SARL, Danu Capital Partners Limited, MLM Management Limited, Setanta Transmissions Limited., and Setanta Interactive Entertainment Limited.

⁴ Mr Leonard Ryan holds the remaining 50% shareholding in Setanta Radio. Setanta Radio is a separate undertaking not connected to Setanta Sports Broadcasting and does not form part of the proposed transaction.

⁵ See <<http://www.kclr96fm.com>> and <<http://www.newstalk.ie>>. These minority shareholdings do not have any veto rights or other contractual rights that would imply a controlling interest.

⁶ Each of Messrs Ryan and O'Rourke has a 37.5% share and Mr O'Meara has the remaining 25% share in Danu.

⁷ Setanta Sport Holdings Limited is the name of a former holding company for the Setanta Sports Group. Setanta Sport Holdings Limited entered into receivership in June 2009. It is still in receivership and is being wound down.

⁸ [...].

10. For the year ended 31 December 2010 Danu's worldwide turnover was approximately €4.8 million all of which was generated in the State.⁹

Setanta Sports Broadcasting

11. Setanta Sports Broadcasting is the holding company of Setanta Sports Channel Ireland Limited and Setanta Sports Hibernia SARL. Both companies are engaged in sports broadcasting and production through the Setanta Ireland and Setanta Sports 1 television channels. These channels focus on Republic of Ireland and Northern Ireland audiences and are dedicated to carrying soccer, Gaelic games and rugby sports programming. These channels are available throughout the State and in Northern Ireland on the UPC analogue and digital distribution platforms and on a subscription basis on the Sky distribution platform.
12. Setanta Sports Broadcasting is currently majority owned by Gaiety Investments, which holds 60% of its shares. The remaining 40% is held by Danu and MLM as described in paragraph 9 above.
13. For the year ended 31 December 2010 Setanta Sports Broadcasting's worldwide turnover was approximately €41.2 million of which approximately €19.2 million was generated in the State.¹⁰

Third Party Submissions

14. No submissions were received.

Rationale for the Proposed Transaction

15. The parties state that the objective of the proposed acquisition is the transfer of control of the target company (i.e., Setanta Sports Broadcasting) to TDL.¹¹

Analysis

16. As described above, the proposed transaction involves a change in shareholdings and a consequent change in control of Setanta Sports Broadcasting. Ultimately Mr O'Rourke, individually and as sole shareholder of TDL,¹² acquires sole control of Setanta Sports Broadcasting.

⁹ This figure includes MLM turnover of approximately €1.0 million, all of which was generated in the State.

¹⁰ These figures include all of Setanta Sports Broadcasting and its two subsidiaries, Setanta Sports Channel Ireland Limited and Setanta Sports Hibernia SARL. Setanta Sports Broadcasting itself generated zero turnover either globally or within the State. Setanta Sports Channel Ireland Limited generated approximately €19.2 million turnover, all generated within the State. Setanta Sports Hibernia SARL generated approximately €22.0 million turnover all generated outside of the State.

¹¹ [...].

¹² TDL has not to date been involved in any area of activity globally or within the State.

17. The Authority examined possible horizontal overlaps in the activities of Setanta Sports Broadcasting and companies, other than TDL and Danu, in which Mr O'Rourke has an interest. Mr O'Rourke has an indirect non-controlling minority shareholding in two Irish radio stations through his 50% shareholding in Setanta Radio as described in paragraph 5 above. Given the nature of these businesses, these commercial interests are not sufficiently substantial to raise competition concerns within the State.
18. The proposed transaction does not raise any vertical issues within the State.
19. In light of the above, the Authority considers that the proposed transaction will not raise competition concerns in any market for goods or services in the State.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed transaction whereby Michael O'Rourke would, through TDL Media Limited, acquire sole control of Setanta Sports Broadcasting Limited will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect, subject to section 23(9)(a) of the Act.

For the Competition Authority

Stephen Calkins
Member of the Competition Authority
Director, Mergers Division