



DETERMINATION OF MERGER NOTIFICATION M/12/002 -

Millington/Siteserv

Section 21 of the Competition Act 2002

Proposed acquisition by Denis O'Brien through Millington Limited of Siteserv plc

Dated 21 May 2012

Introduction

1. On 16 March 2012, 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 Denis O'Brien would, through his company Millington Limited ("Millington"), acquire sole control of the operating businesses of Siteserv plc (collectively "Siteserv"). Siteserv plc, as vendor, is selling all of its business interests and will be liquidated subsequent to the completion of the proposed transaction.¹
2. On 20 March 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.
3. Section 23 (10) of the Act defines a "media merger" for purposes of section 23 as "a merger or acquisition in which one or more of the undertakings involved carries on a media business in the State." This definition is fully applicable to proposed transactions, such as the proposed acquisition of Siteserv by Denis O'Brien,² which are notifiable under Section 18(1)(a). The definition in Section 23(10) of the Act is unaltered by S.I. 122 of 2007 which specifies a class of mergers and acquisitions requiring notification regardless of whether they satisfy the Section 18(1)(a) thresholds.
4. On 2 April 2012 the Authority served a Requirement for Further Information ("RFI") on Millington pursuant to section 20(2) of the Act. Subsequently, on 13 April 2012, the Authority served an RFI to each of Millington and Siteserv. Issuing the RFIs automatically suspended the procedure for the Authority's Phase 1 assessment.
5. Upon receipt of the responses to the RFIs, the "appropriate date" (as defined in section 19(6) of the Act) became 24 April 2012 and the new Phase 1 deadline became one month from that date.
6. The Authority also requested and received, on an on-going basis, further information and clarifications from the notifying parties.

¹ See *Result of EGM and Proposed Cancellation* of 10 April 2012 and *Further Re Proposed Cancellation* of 25 April 2012 at <<http://www.siteserv.ie/investors.html>>.

² Denis O'Brien carries on a media business in the State, as described subsequently in paragraph 12.

7. During the investigation, the Authority sought the views of a number of third parties, comprising competitors, customers and suppliers of Siteserv and/or companies controlled by Denis O'Brien. In particular, the Authority sought the views of third parties involved in the electronic communications and media infrastructure sectors. None of these third parties raised concerns specifically about the proposed transaction. The Authority also consulted with the Commission for Communications Regulation, which did not raise any concerns about the proposed transaction.
8. Having considered all the available information in its possession (i.e., information from the parties, third parties and its own research) the Authority has concluded that the result of the proposed transaction will not be to substantially lessen competition in any market for goods or services in the State.

The Undertakings Involved

Denis O'Brien - Millington

9. Denis O'Brien is a private individual who owns and controls 100% of Millington. Millington was incorporated in the Isle of Man in December 2011 as an acquisition vehicle to facilitate the proposed transaction.³ Cathkin Holdings Limited ("Cathkin") is a wholly owned subsidiary of Millington. Cathkin was incorporated in Dublin in March 2012 for the purposes of the proposed transaction.⁴ Other than Cathkin, Millington holds no shares in any other companies and has no other subsidiaries.
10. Neither Millington nor Cathkin carry on any business and there is no evidence to suggest either had generated any revenue to date, either in the State or elsewhere.
11. In addition to the controlling interests set out below, Denis O'Brien also has various property and share interests, including, as of 4 May 2012, a 29.9% shareholding in Independent News and Media PLC,⁵ an international newspaper and media group with interests in the Republic of Ireland, Northern Ireland, South Africa Australia and New Zealand.

Denis O'Brien – Other Controlling Interests

12. Millington states that, as of April 2012, Denis O'Brien has a controlling interest in each of the companies listed in Table 1.⁶ Table 1 also identifies the most significant region, in terms of turnover, for each of

³ See *Announcement re Proposed Disposal of the Siteserv Business* of 16 March 2012 at <http://siteserv.ie/investors.html>.

⁴ The Share Sale Agreement ("Agreement") signed by the parties 15 March 2012 states that Millington may prior to the closing of the proposed transaction, assign or novate the Agreement to Cathkin Holdings Limited ("Cathkin") or a wholly owned subsidiary of Cathkin.

⁵ See [http://www.inmplc.com/news/uploads/TR1_D_OBrien_4_May_12_\(b\).pdf](http://www.inmplc.com/news/uploads/TR1_D_OBrien_4_May_12_(b).pdf).

⁶ Millington's advice, in response to the RFI of 2 April 2012, is that Table 1 lists the companies which Denis O'Brien currently controls (as defined in section 16(2) of the Act). Millington also advises that Table 1 does not cover "(i) personal investments of Denis O'Brien in commercial and residential property, and (ii) Denis O'Brien's private office and personal investments in share portfolios (including holdings in public or private companies or funds), none of which include any businesses over which he has control." The Authority interpreted this to mean that Table 1 does list every undertaking that Mr. O'Brien currently "controls" as that term is defined in section 16(2) of the Act.

the companies and also the turnover for each company within the State.⁷

Table 1: Denis O’Brien Controlling Interests - April 2012

Firm	Activities/ Sectors	Regions of Activity	Turnover in the State (€million)
Digicel Group Limited ("DGL")	Mobile Telecoms	Caribbean, Central America and South Pacific Islands	€[...]
Digicel Holdings (Central America) Limited ("DHCAL")	Mobile Telecoms	Caribbean, Central America and South Pacific Islands	€[...]
Business Recovery Services Limited (Business Recovery")	IT disaster recovery	Ireland	€[...]
Communicorp Group Limited ("Communicorp")	Radio and Digital Media ⁸	Ireland ⁹	€[...]
SaonGroup Limited ("SaonGroup") - Irishjobs.ie in Ireland	Websites and software for recruits and job seekers –	Ireland, Europe, China, Africa, Central America and the Caribbean	€[...]
Aergo Capital Limited ("Aergo")	Commercial aircraft leasing	Africa, North America, South America ¹⁰	€[...]
TBL Holdings Limited ("TBL")	Coffee and muffin shops ¹¹	Ireland and UK	€[...]

Source: Information supplied by the Parties

⁷ For each company the turnover is reported for the most recently available completed financial year. The relevant financial years are: 31 March 2011 for DGL and DHCAL; 30 September 2011 for Business Recovery; and 31 December 2011 for each of Business Recovery, Communicorp, SaonGroup, Aergo and TBL. Worldwide turnover figures (€million) for the equivalent time periods are as follows: DGL €[...], DHCAL €[...], Business Recovery €[...], Communicorp €[...], SaonGroup €[...], Aergo €[...] and TBL €[...]. An approximate 2011 combined turnover figure (€million), notwithstanding the different financial reporting dates, is €[...] of which €[...] was generated within the State. The DGL and DHCAL figures are derived using the annual average exchange rate for the year 1 April 2010 to 31 March 2011.

⁸ Within the State Communicorp operates the following radio stations: Today FM, Newstalk 106-108 FM, 98FM, Spin 103.8 and Spin Southwest. Communicorp also has a controlling interest in ICAN, a digital media marketing advertising agency.

⁹ Outside of Ireland, Communicorp controls radio stations in Czech Republic, Bulgaria, Estonia, Finland, Latvia, Hungary and Jordan.

¹⁰ Aergo is headquartered in Dublin with representative offices also in Chicago USA, Johannesburg South Africa, Nairobi Kenya and Santiago Chile.

¹¹ TBL operates a franchise business trading throughout Ireland and the UK as "BBs Coffee and Muffins".

Siteserv

13. Siteserv plc, the owner of the businesses to be acquired by Millington, is incorporated in Ireland and is currently listed on the London and Dublin stock exchanges.
14. Siteserv is comprised of three divisions, namely: the Infrastructure and Utilities division, the UK based Deborah Services division, and the Access division. Within these three divisions there are six operating businesses as outlined below in Table 2.¹² These businesses are involved in Ireland and the UK in infrastructure and utilities support services in a broad range of sectors. These sectors include including energy, satellite & telecommunications, education, healthcare, events services, civil engineering and construction.
15. For the year ended 30 April 2011, Siteserv’s worldwide turnover was approximately €168.5 million of which approximately €[...] million was generated in the State.¹³

Table 2: Siteserv – April 2012

Division	Firm and Sector	Regions of Activity	Turnover in the State (€million)
Infrastructure and Utilities	Sierra Support Services ("Sierra") <ul style="list-style-type: none"> • Energy networks • Home energy • Telecommunications • Civil engineering 	Ireland ¹⁴ and UK	€[...]
	Roankabin <ul style="list-style-type: none"> • Portable accommodation 	Ireland ¹⁵	
	Holgate Infrastructure and Motorway Services <ul style="list-style-type: none"> • Motorway crash barriers; and • Motorway noise abatement 	Ireland ¹⁶	

¹² Siteserv plc is incorporated in Ireland and headquartered in Lucan, County Dublin. For further information see <<http://www.siteserv.ie>>.

¹³ Siteserv turnover outside of the State for the year ended 30 April 2011 was €[...] million for the Infrastructure and Utilities Division, €[...] million for the Access Division and €[...] million for the UK/Deborah Division.

¹⁴ Outside of the State, Sierra has an office in Belfast, Northern Ireland.

¹⁵ Outside of the State, Roankabin has an office in Wakefield, England.

¹⁶ Outside of the State, Holgate has an office in Warsaw, Poland.

Access	Siteserv Access and Formwork ("SAF") <ul style="list-style-type: none"> • Formwork and scaffolding; • Edge protection; • Fencing and access equipment; • Contract scaffolding. 	Ireland	€[...]
	EventServ <ul style="list-style-type: none"> • Sale and Hire of outdoor equipment to for outdoor events 	Ireland	
UK/Deborah Services	Hire and Sales <ul style="list-style-type: none"> • Scaffolding • Fencing equipment Contract scaffolding <ul style="list-style-type: none"> • Scaffolding 	UK	€[...]

Third Party Submissions

16. One submission was received which was subsequently withdrawn.

Rationale for the Proposed Transaction

17. The commercial objective of the proposed transaction for Siteserv plc is to realise a monetary return. On 16 January 2012, Siteserv plc announced that, in conjunction with its advisers, it was exploring strategic and corporate options for discussion with Irish Bank Resolution Corporation ("IBRC") in advance of the expiration, in December 2012, of its existing debt facilities.¹⁷ On 16 March 2012 Siteserv plc stated that "as part of this review it was recognised that the debt burden being carried by the Company was unsustainable"¹⁸ and recommended the sale of Siteserv to Millington.

¹⁷ See *Statement re Media Comment* 16 January 2012 at <http://siteserv.ie/investors.html> and *op. cit.* note 3.

¹⁸ *Op. cit.* note 3. To illustrate, operating revenues grew by 11% to €168.5million in the year to 30 April 2011. Operating profit remained flat at €8.3m, and after providing for interest costs of €8.2million, pre tax profit amounted to €0.1million. The Announcement indicates that IBRC has agreed to a write down of the debt owed to it and states that "[w]ithout this agreement from IBRC the proposed disposal would not be capable of implementation and it is likely that Shareholders would not have realised any return on their investment."

18. Siteserv plc states that "Denis O'Brien has confirmed ... that he will procure that the Purchaser has, on completion, sufficient funds to pay the Consideration."¹⁹
19. The parties also state that "Denis O'Brien is quite familiar with the Siteserv Group's operations and believes that Siteserv's existing businesses have scale and provide a platform to grow the businesses further both organically and through acquisitions. Furthermore, Siteserv has a strong management team with whom Millington can work to help drive this growth."²⁰

Analysis

20. Both parties are active in the State. In the Notification document the parties submit that "the businesses interests controlled by Millington's owner, Denis O'Brien, do not overlap with the Siteserv Business that is being acquired by Millington."²¹ The parties further submit in the Notification that this statement holds for both horizontal and vertical overlaps.²²

Horizontal Overlap

21. The Authority's investigation has confirmed that there is no horizontal overlap, either worldwide or within the State, between Denis O'Brien, or any Denis O'Brien controlled companies listed in Table 1, and any of the Siteserv divisions listed in Table 2. The Authority has not uncovered any evidence that would suggest otherwise.
22. Notwithstanding an absence of horizontal overlap between the activities of the parties, it is still possible that a merger between two or more undertakings could adversely affect competition to the detriment of consumers by way of removing a potential competitor. That is, competition concerns might arise if a potential competitor is removed, as would be the case if entry to a market is by way of an acquisition of an exiting business rather than by starting a new business.
23. The removal of a potential competitor does not appear to be a viable theory of harm in this instance. Both Millington and Siteserv, in response to the Authority's RFIs of 13 April, indicated that they were not aware of any reports, analysis or records prepared by or for Millington, Denis O'Brien or any of the companies in which Mr O'Brien has a controlling interest discussing the possibility or indicating an interest or intention to enter the sectors in which Siteserv currently operates within the State. The Authority has found no evidence that would indicate a previous interest or intention (i.e., prior to the proposed transaction) on the part of Millington, Denis O'Brien or any of the companies in which Mr O'Brien has a controlling interest to enter the business sectors in which Siteserv currently operates. As noted previously, the Authority knows of no entity that believes that the proposed transaction will directly harm competition.

¹⁹ *ibid.*

²⁰ Notification Form page 10.

²¹ Notification Form page 15.

²² *ibid.*

Vertical Overlap

24. In its response to the Authority's RFI of 2 April 2012, Millington stated that "[t]here are no horizontal or vertical areas of overlap between the parties with respect to the island of Ireland or elsewhere."²³ Subsequently, in response to the Authority's two RFIs of 13 April 2012, one each to Millington and Siteserv, the parties showed that there were vertical relationships between the parties. In particular, Sierra is, or has been, a customer of SaonGroup and Business Recovery and Communicorp is, or has been, a customer of Eventserv. The particulars of the vertical relationships are outlined in paragraphs 25 to 27 below.
25. Sierra purchased recruitment services from Irishjobs.ie for €2,115 in 2009; €6,999 in October 2010 and €5,000 in September 2011 (all VAT exclusive). Sierra is not, however, a significant customer of SaonGroup, accounting for [...] % of SaonGroup's worldwide turnover and [...] % of SaonGroup's turnover in the State.
26. Sierra purchased disaster recovery services from Business Recovery Services of €11,350 (VAT exclusive) per annum for each of 2009, 2010, 2011, and 2012. Sierra is not, however, a significant customer of Business Recovery. For example, in 2010 Sierra accounted for [...] % of Business Recovery's business continuity services revenue²⁴ and [...] % of Business Recovery's total revenue for 2010, all of which was generated within the State.
27. Communicorp has been a customer of Eventserv for the hire of outdoor event equipment. In particular 98FM, hired crowd control barriers from Eventserv for €172 (VAT exclusive) in 2011.
28. The magnitude of trade between the parties both in terms of monetary amount and as proportions of either supplier sales revenue or purchaser expenditure is minimal. Furthermore, there are viable alternative suppliers and customers available in each traded service. These factors indicate that the proposed transaction does not raise vertical competitive concerns. The Authority has not uncovered evidence to suggest otherwise.
29. In light of the lack of actual or potential horizontal overlap and the minimal vertical relationships between the parties, the Authority considers that the proposed transaction will not raise competition concerns in any market for goods or services in the State.

²³ Millington's RFI response to Question 3.

²⁴ Millington's RFI response of 5 April 2012 included Business Recovery revenue figures based on Audited accounts for the financial year ended 31 December 2010. Accordingly, the 2010 revenue figures are used in this context for illustrative purposes.

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 Denis O'Brien would, through his company Millington Limited, acquire sole control of the operating businesses of Siteserv plc 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