



DETERMINATION OF MERGER NOTIFICATION M/12/014 - Manwin/RK Netmedia

Section 21 of the Competition Act 2002

Proposed acquisition by Manwin Holding S.à.r.l. of affiliates and assets of RK Netmedia Inc

Dated 28 August 2012

Introduction

1. On 7 August 2012, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received notification of a proposed acquisition by Manwin Holding S.à.r.l. ("Manwin") of sole control of certain affiliates and assets of RK Netmedia Inc. ("the RK Companies").
2. Prior to notification, the merging parties informed the Authority that the proposed transaction was not notifiable. The reason provided by the merging parties was that they did not consider the proposed transaction to be a media merger primarily because in their view the RK Companies do not compile programme material and therefore do not carry on a media business for the purposes of Section 23(10) of the Act.
3. The Authority informed the merging parties in writing on 2 July 2012 that it did not agree with the merging parties' conclusion that the proposed transaction was non-notifiable. The Authority informed the merging parties that on the basis of the information provided to the Authority, the undertaking in question provides a broadcasting service within the meaning of Section 23(11)(a) of the Act because:
 - The undertaking compiles programme material as it edits and puts together material commissioned from other sources;
 - The undertaking supplies this compiled material to third party operations for the purpose of its being transmitted or relayed by satellite and the other means; and
 - The transmission or relay of the material is made to the general public, as it is possible for anyone to access the service on the payment of a fee or subscription.
4. The merging parties therefore decided to notify the Authority of the proposed transaction under Section 18(1)(b) of the Act.
5. On 7 August 2012, the Authority forwarded a copy of the notification to the Minister and notified the undertakings involved in the proposed transaction that the Authority considered it to be a "media merger" within the meaning of section 23 of the Act.

The Undertakings Involved

Manwin

6. Manwin, headquartered in Luxembourg, is active in the production and distribution of adult entertainment products. Such products comprise adult entertainment film, video and picture content, primarily distributed via the internet. Manwin creates, develops and manages adult entertainment brands. Examples of Manwin's adult entertainment websites include YouPorn, PornHub, Tube8, XTube, ExtremeTube, and SpankWire. Manwin has developed various in-house technologies with respect to High Definition video streaming and website optimization which enable it to compete on a matchless (in Manwin's view, a currently technologically advanced) playing field.
7. In the State, Manwin generates revenue from online subscriptions to its adult entertainment websites. Manwin also owns the Playboy TV channel which is available in the State through Sky and UPC.
8. For the financial year ending 31 December 2011, Manwin generated worldwide turnover of approximately €[...], of which €[...] was generated in the State.

The RK Companies

9. The RK Companies, headquartered in the United States, are active in the production and distribution of adult entertainment products. Although the RK Companies have historically distributed their products only via the internet and DVD, in recent years, a small portion of the RK Companies' content, which was produced for internet use, has been made available via TV and video. The RK Companies operate the Reality Kings Network, consisting of 37 websites which offer adult entertainment products. Customers can subscribe to a membership program, enabling them to watch films in full length and allegedly of high video quality. Such films can be viewed via the website directly, via a personal computer or via a mobile phone device such as an iPhone.
10. In the State, the RK Companies generate revenue only from online subscriptions to their adult entertainment websites. The RK companies do not currently distribute adult entertainment products via TV, video or magazines to customers on the island of Ireland.
11. For the financial year ending 31 December 2011, the RK companies generated worldwide turnover of approximately €[...], of which €[...] was generated in the State.

The Proposed Transaction and Rationale

12. As a result of the proposed transaction, Manwin will acquire [...] affiliate companies¹ and the following assets:
 - [...];
 - [...];

¹ [...].

- [...]; and,
 - [...].
13. The parties state in the notification that “Manwin’s commercial objective is to improve Manwin’s position in adult entertainment products distributed via the internet. The RK Companies will help to improve and broaden Manwin’s product range in its area of business.”

Third Party Submissions

14. No submission was received.

Analysis

15. With respect to the relevant product market, the parties state in the notification that the distribution of adult entertainment products can be divided into four segments: online, TV, video (DVD/Blue-ray), and magazines. The parties also state in the notification that “due to the business sectors that Manwin and the RK Companies are active in, the transaction is only relevant to: (a) distribution via the internet and (b) adult entertainment products.”
16. With respect to the relevant geographic market, the parties state in the notification that “the online sector is worldwide (Manwin has turnover in more than [...] countries worldwide and the absence of any country specific product characterisation). Virtually no entry barriers exist online for the production of adult entertainment products and content is accessed worldwide.”
17. The RK Companies do not currently distribute adult entertainment products via TV, video or magazines to customers on the island of Ireland. The RK Companies’ revenue in the State is generated entirely from customer subscriptions to its adult entertainment websites. Thus, there is horizontal overlap between the parties in the State with respect to the distribution of adult entertainment products via the internet.
18. There is no vertical relationship between the activities of the parties in the State.
19. For the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the competitive impact in the distribution of adult entertainment products via the internet. This is the narrowest possible product market affected by the proposed transaction. The Authority, however, does not need to come to a definitive view on the relevant product market because its conclusions concerning the competitive effects of the proposed transaction, outlined below, would be unaffected if the relevant product market is broader.
20. With respect to the relevant geographic market, the Authority considers that the geographic reach of the distribution of adult entertainment products via the internet is likely to be worldwide. As noted by the parties, content on most adult entertainment websites may be accessed from anywhere in the world. For the purpose of examining the competitive effects of the proposed transaction, the Authority will examine the competitive impact in the distribution of

adult entertainment products via the internet in the State. This is the narrowest possible geographic market affected by the proposed transaction. The Authority, however, does not need to come to a definitive view on the relevant geographic market because its conclusions concerning the competitive effects of the proposed transaction, outlined below, would be unaffected if the relevant geographic market were broader.

21. The parties estimate that Manwin and the RK Companies had a worldwide share in 2011 of approximately [0-5]% and [0-5]%, respectively, in relation to the distribution of adult entertainment products online.² The parties state in the notification that although no data is available to estimate the equivalent share of the distribution of adult entertainment products online in the State, any such share is likely to be *de minimis* on the basis of the small revenues generated by both parties in the State.
22. The Authority is of the view that the proposed transaction will not raise any competition concerns in the State for the following reasons. First, the revenue generated by the parties in the distribution of adult entertainment products in the State is small, particularly in the case of the RK Companies (€[...] in 2011).
23. Second, Manwin will face competition from a wide range of competitors post-transaction. The geographic reach of adult entertainment products via the internet seems to be global. Content on many adult entertainment websites may be accessed worldwide. The parties state in the notification that online adult entertainment content is produced worldwide without regional adaptations. In its 2010 report entitled "The Future of Online Adult Entertainment", Datamonitor states that the online adult entertainment industry is highly fragmented with "a relatively small number of large firms and a huge number of smaller firms."³ Datamonitor further notes that the proliferation of free adult entertainment websites means that a plethora of video adult entertainment is available for free online. This is having a negative impact on the ability of premium adult entertainment providers to attract and retain fee-paying members.⁴
24. Third, Datamonitor states that barriers to entry into the online adult entertainment industry have fallen as a result of technological developments (including the availability of low-cost, high-quality video cameras)⁵ which have reduced content creation and distribution costs.⁵
25. In light of the above, the Authority has concluded that the proposed transaction will not raise any competition concerns in the distribution of adult entertainment products via the internet in the State.

² These estimates are based on projected adult entertainment online revenue figures for 2011 contained in a 2010 report by the Datamonitor Group entitled "The Future of Online Adult Entertainment", Table 17, p.99. The Datamonitor Group provides independent data, analysis and opinion across a wide range of industries.

³ *Op cit.* Chapter 3, p.16.

⁴ *Op cit.* Chapter 4, p.51.

⁵ *Op cit.* Chapter 3, p.16.

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 by Manwin Holding S.à.r.l. of sole control of certain affiliates and assets of RK Netmedia Inc. will not be to substantially lessen competition in markets for goods or services in the State, and, accordingly, that 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