



## **DETERMINATION OF MERGER NOTIFICATION M/13/005 -**

### **BSkyB/Be Un**

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#### **Section 21 of the Competition Act 2002**

#### **Proposed acquisition by British Sky Broadcasting Limited of Be Un Limited**

**Dated 25 March 2013**

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#### **Introduction**

1. On 4 March 2013, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received notification of a proposed acquisition by British Sky Broadcasting Limited ("BSkyB") of Be Un Limited ("Be Un").
2. On 4 March 2013, 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**

##### ***BSkyB***

3. BSkyB is a wholly owned subsidiary of British Sky Broadcasting Group plc ("BSkyB plc") which is a public company limited by shares registered in the United Kingdom.
4. BSkyB is the holding company of a number of subsidiaries which are active in a variety of sectors in the United Kingdom and the State, namely:
  - a) the creation and wholesale supply of TV channels;
  - b) the retail distribution of pay-TV channels via digital direct-to-home satellite, digital terrestrial TV and via the internet and mobile technologies;
  - c) the provision of pay TV technical services such as conditional access, access control and electronic programme guide services;
  - d) advertising on BSkyB and third-party TV channels, and on BSkyB's online media properties;
  - e) the provision of retail telephony and broadband services;
  - f) enhanced and interactive services; and
  - g) gaming and betting.

5. In the State, BSkyB is active in the retail distribution of pay-TV by means of offering a Sky set top box together with retail pay TV packages which can include one or more of a range of channels including Sky Movies, Sky Entertainment Extra, Sky Sports and HD Pack channels. BSkyB also provides its channels to other pay-TV providers in the State on a wholesale basis including UPC Ireland.<sup>1</sup> In February 2013 BSkyB launched the provision of fixed broadband and telephony services in the State.
6. For the financial year ending 30 June 2012 BSkyB plc generated worldwide turnover of approximately €8,375 million, of which €[...] was generated in the State.

### **Be Un**

7. Be Un is a wholly-owned subsidiary of Telefónica UK Limited which carries on business only in the United Kingdom, trading under the brand names O2 and BE. Be Un has no presence in the State.
8. Telefónica UK Limited is a wholly-owned subsidiary of Telefónica SA. Telefónica SA is a global telecommunications operator, incorporated in Spain, with business activities in the State trading under the name O2 in the mobile voice, data, mobile broadband/internet markets and with similar business activities in more than 20 other countries throughout Europe and South America.
9. In the United Kingdom Telefónica SA operates through Telefónica UK Limited which is a wholly owned subsidiary of Telefónica Europe plc, its ultimate UK parent, which is itself a wholly owned subsidiary of Telefónica SA. Telefónica UK Limited trades under the brand names O2 and BE and provides mobile telecommunications and fixed broadband and telephony services to consumers and businesses in the United Kingdom.
10. Telefónica UK Limited and Be Un do not offer any products or services in the State nor do they have a physical presence in the State. In the State Telefónica SA operates through Telefónica Ireland Limited trading under the name O2 ("O2 Ireland"). O2 Ireland offers mobile communication services (including voice, data and mobile internet services) to customers in the State but does not provide fixed telephony or broadband services. O2 Ireland is not part of the proposed transaction
11. For the financial year ending 31 December 2012, Be Un generated worldwide turnover of approximately €[...]. Be Un generated [...] in the State for the financial year ending 31 December 2012.

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

12. The parties state in the notification that:

"BSkyB is acquiring the Target in order to increase its residential broadband and telephony customer base in the UK, and thereby assist in improving the profitability

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<sup>1</sup> BSkyB's basic TV channels are also wholesaled to the following operators in the State: Crossan CableComm Limited, Casey Cablevision Limited, Smyths Audio & Video System Limited, Turbo Leisure Limited, 3 Play Plus Limited, Cablewatch Limited and Magnet Networks Limited.

of those activities through the benefits of economies of scale and scope. [...]"

### **Third Party Submissions**

13. No submission was received.

### **Analysis**

14. Neither Telefónica UK Limited nor Be Un is active in the State. Thus, there is no horizontal or vertical overlap between the activities of the parties in the State. Furthermore, the parties state in the notification that, although BSkyB launched its fixed broadband and telephony products in the State in February 2013, [...].
15. In light of the above, the Authority has concluded that the proposed transaction will not raise any competition concerns in the State.

### **Ancillary Restraints**

16. [...].
17. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

## **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 acquisition by British Sky Broadcasting Limited of sole control of Be Un Limited 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**