



DETERMINATION OF MERGER NOTIFICATION M/13/029 -

Fox/Setanta Africa

Section 21 of the Competition Act 2002

Proposed acquisition by Fox International Channels Netherlands Holding B.V. of Setanta Africa Services Limited.

Dated 24 October 2013

Introduction

1. On 7 October 2013, 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 21st Century Fox International Group ("21st Century Fox"), through its wholly owned subsidiary Fox International Channels Netherlands Holding B.V. ("Fox ICN"), would acquire sole control of the share capital of Setanta Africa Services Limited ("Setanta Africa Services").
2. Fox ICN already owns approximately 24% of the share capital of Setanta Africa Services. The proposed transaction would be put into effect pursuant to a sale and purchase agreement whereby Fox ICN would acquire the remaining approximately 76% of Setanta Africa Services share capital from the other current shareholders: Michael O'Rourke, who currently has a controlling interest, Kelly Butler and Mark Hoffman. In effect the acquisition will transfer sole control from Mr O'Rourke to Fox ICN.¹
3. Neither Fox ICN nor 21st Century Fox currently has, nor will have subsequent to the proposed transaction, a majority or minority ownership interest in any of the other entities, within the State, in which Michael O'Rourke has a minority or majority interest.²
4. On 8 October 2013, 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.

The Undertakings Involved

21st Century Fox

5. 21st Century Fox, registered in Delaware and headquartered New York, New York USA, is a major global media organisation involved in various media activities, i.e.:
 - Film production and distribution.

¹ The current shareholdings in Setanta Africa are: Michael O'Rourke (59.8%), Fox ICN (23.6%), Kelly Butler (10.6%) and Mark Hoffman (6.0%).

² Correspondence from Setanta Africa Services dated 21 October 2013.

- Television programme production and distribution, primarily through the sale of distribution rights to cable and Pay-TV platforms in USA and internationally.
 - Television stations, primarily in USA.
 - Shareholdings in broadcasting and satellite companies including a non-controlling 39.14% stake in BSkyB.³
 - Cable TV networks, primarily in Latin America and Brazil.
 - Distributing programming content e.g., via DVDs for home entertainment.
6. The parties submit that neither Fox ICN nor 21st Century Fox have a physical presence in the State but that 21st Century Fox derives revenue within the State primarily from license fees for:
- screening Fox-licensed films in cinemas (approximately €[...] million), and
 - television broadcasting of Fox-licensed series and films (approximately €[...] million).⁴
7. For the financial year ended 30 June 2013, 21st Century Fox had a worldwide turnover of approximately €21.363 billion,⁵ of which approximately €[...] million was generated within the State.⁶

Michael O'Rourke

Setanta Sports Broadcasting

8. In addition to Setanta Africa Services (see below in paragraphs 13 and 14), Michael O'Rourke has a controlling interest in TDL Media Limited ("TDL"), an Irish incorporated company, which controls Setanta Sports Broadcasting Limited ("Setanta Sports Broadcasting") through Danu Capital Partners Limited ("Danu Capital").⁷
9. Setanta Sports Broadcasting, through its two wholly owned subsidiaries Setanta Sports Channel Ireland Limited and Setanta Sports Hibernia S.a.r.l., broadcasts the Setanta Ireland and Setanta Sports 1 television channels through the Sky and UPC pay-TV platforms. In addition subscribers to the "Setanta Sports Pack" can also access BT Sport 1, BT Sport 2, and ESPN.⁸

³ Notification Form page 7. 21st Century Fox also owns Sky Italia and a controlling 55% stake in Sky Deutschland as well as shareholdings in India and China.

⁴ Calculated using the average Annual ECB Exchange rate for the period July 2012 to June 2013 of €1=\$US1.2955.

⁵ *ibid.*

⁶ 21st Century Fox, in correspondence dated 18 October 2013, states that none of the turnover derived by 21st Century Fox in the State can be attributed to Fox ICN. Also the turnover figure for the State excludes any income attributable to 21st Century Fox from its 39.14% shareholding in BSkyB, which broadcasts into Ireland.

⁷ M/11/039 TDL/Danu/Setanta at <<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/TDL-Media--DCPL--Setanta.aspx>>.

⁸ See <<http://www.setanta.com/ie/tv-listings>> and <<http://www.setanta.com/ie/subscribe>>.

10. The content on these channels includes Barclays Premier League Football, FA Cup, Champions League, Europa League, top flight European football from Germany, Italy and France, Aviva Premiership Rugby, French Top 14 rugby, UFC, Formula One, Allianz National Leagues and Gaelic Athletic Association ("GAA") games. The proposed transaction has no impact on the production and broadcasting activities of Setanta Sports Broadcasting in the State.

[...]

11. Mr O'Rourke has [...] interests,⁹ within the State, in:
- Setanta Turkey Limited, an Irish company incorporated in February 2013 [...].
 - Setanta Interactive Entertainment Limited, an Irish incorporated company which operates the Setantabet service.
 - Setanta Transmissions Limited, which provides play-out services for various Setanta and third party channels.
 - MSK Media Limited, an Irish incorporated company which holds and distributes international GAA rights (outside of Ireland).

[...]

12. Michael O'Rourke also has [...] interests, within the State, in:
- Setanta Radio Limited ("Setanta Radio"), a non-trading holding company with minority interests in two Irish radio stations: Newstalk 106 Limited (17.6%) and CK Broadcasting Limited (12.5%).
 - Danu Investment Partners Limited, which within the State, holds interests in Setanta Sports Asia Limited (an Irish incorporated company) which distributes the Setanta Asia sports television channel to satellite and cable platforms across various countries in Asia.

Setanta Africa Services

13. Setanta Africa Services, the target business, is incorporated and headquartered in Dublin Ireland but does not broadcast within the State. Setanta Africa Services broadcasts sporting events in Africa, via three channels:
- Setanta Africa which broadcasts football primarily utilising broadcast rights acquired from English Championship, Scottish premiership, Major League Soccer as well as some individual team channels.¹⁰

⁹ With the exception of MSK Media these interests are held either via TDL and/or via Danu Capital.

¹⁰ For a description of so called up stream purchasing and downstream exploitation of sport broadcasting rights see M/13/003 – BT/ESPN Global at <<http://www.tca.ie/EN/Mergers--Acquisitions/Merger-Notifications/BT--ESPN-Global.aspx>>.

- Setanta Action, focusing on action sports such as boxing and martial arts.¹¹
 - Zuku Sports, a high definition sports channel, specifically targeting East African countries.
14. For the financial year ended 30 June 2013 the world-wide turnover of Setanta Africa Services was approximately €[...] million, of which zero was generated within the State.

Third Party Submissions

15. No submissions were received.

Rationale for Transaction

16. 21st Century Fox has highlighted that the proposed transaction affords it the opportunity to expand its operations internationally, particularly in sub-Saharan Africa.

Analysis

17. There is no overlap, within the State, between 21st Century Fox and Setanta Services Africa or between Fox ICN and Setanta Africa Services. Setanta Africa Services does not generate revenue within the State.
18. The proposed transaction does not give rise to vertical competition concerns within the State.
19. The above factors do not indicate that the proposed transaction is likely to raise competition concerns in any market for goods or services in the State.

Ancillary Restraints

20. As part of the proposed transaction Mr O'Rourke and Ms Butler have entered into non-compete and non-solicitation covenants to apply for [...].
21. [...]
22. The Authority considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

¹¹ Setanta Africa and Setanta Action are broadcast by Setanta Sports Africa Limited, a wholly owned subsidiary of Setanta Africa Services. A second wholly owned subsidiary, Setanta Sports Africa Management Services Limited, has no activities or turnover to date.

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 21st Century Fox International Group, through its wholly owned subsidiary Fox International Channels Netherlands Holding B.V., would acquire sole control of Setanta Africa Services 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