



DETERMINATION OF MERGER NOTIFICATION M/13/033 -

Sappho/TCH

Section 21 of the Competition Act 2002

Proposed acquisition by Sappho Limited of sole control of WKW FM Limited and South East Broadcasting Company Limited and joint control of Siteridge Limited

Dated 10 January 2014

Introduction

1. On 27 November 2013, in accordance with section 18 of the Competition Act 2002 ("the Act"), the Competition Authority ("the Authority") received a notification of a proposed acquisition whereby Sappho Limited ("Sappho") will acquire sole control of WKW FM Limited ("Beat FM") and South East Broadcasting Company Limited ("WLR FM") and joint control of Siteridge Limited ("Red FM"). The vendor of the three radio stations is Mr. Kieran Wallace of KPMG acting as receiver of the assets of Thomas Crosbie Holdings Limited ("TCH").
2. On 27 November 2013, pursuant to section 23(1) of the Act, 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.
3. On 9 December 2013, the parties submitted proposals under sections 20(3) and (4) of the Act to address any potential competition concerns arising from the proposed transaction. Under section 21(4) of the Act, the Authority has to make a Phase 1 determination within 45 days after the appropriate date.

Sappho

4. Sappho, a private limited company incorporated under Irish law, is a wholly-owned subsidiary of Landmark Media Investments Limited ("Landmark") whose subsidiaries publish the following national and regional daily and weekly newspapers: Irish Examiner, Evening Echo, The Laois Nationalist, The Kildare Nationalist, The Nationalist & Leinster Times, The Echo, Wexford Echo, Gorey Echo, New Ross Echo, The Western People, The Waterford News & Star, and Roscommon Herald. In addition, Landmark operates an online breaking news website (breakingnews.ie) and an online recruitment portal (recruitIreland.com).
5. Landmark was incorporated in March 2013 for the purpose of acquiring the print and online media interests of TCH. The entire issued share capital of Landmark is held by Rinvery Limited, a holding company. All of the shares in Rinvery Limited are held by two individuals: Ted

Crosbie (who holds [...]% of the voting shares in TCH) and Tom Crosbie (who does not hold shares in TCH).

6. Sappho commenced trading on 6 March 2013. For the period 6 March 2013 to 30 September 2013, Sappho's worldwide turnover was €[...] all of which was generated in the State.

Beat FM

7. Beat FM is a commercial radio station. It provides a regional youth radio service for counties Wexford, Waterford, Carlow, Kilkenny and South Tipperary and is aimed at young adults. This service is provided pursuant to a sound broadcasting contract between the Broadcasting Authority of Ireland ("BAI") and Beat FM dated 12 June 2003. The current sound broadcasting contract expires on 30 September 2014.
8. For the financial year ending 30 September 2013, Beat FM's worldwide turnover was €[...] all of which was generated in the State.

WLR FM

9. WLR FM is a commercial radio station. It provides a local radio service for Waterford city and county and is aimed at 22-55 year olds. This service is provided pursuant to a sound broadcasting contract between BAI and WLR FM dated 20 August 2003. The current sound broadcasting contract expires on 30 January 2014.
10. For the financial year ending 30 September 2013, WLR FM's worldwide turnover was €[...] all of which was generated in the State.

Red FM

11. Red FM is a commercial radio station. It provides a local radio service for Cork city and county and is aimed at 15-35 year olds. This service is provided pursuant to a sound broadcasting contract between BAI and Red FM dated 10 January 2002. The current sound broadcasting contract expires on 28 February 2014.
12. Red FM is currently controlled by Vienna Investments Limited ("Vienna"). Post-transaction, Sappho and Vienna will have joint control of Red FM. Vienna is a non-trading nominee company whose entire share capital is held by Pearse Farrell and Deirdre Kiely (partners of RSM Russell Grant Sparks) on behalf of that partnership. The notifying parties informed the Authority that the shares held by Vienna in Red FM are held on trust for a number of individuals. In addition to its shareholding in Red FM, Vienna also holds on trust for the same individuals a 36% shareholding in Classic Rock Broadcasting Limited ("Radio Nova") and a 25% shareholding in Folder Media UK Limited which provides digital radio and related services in the United Kingdom.
13. For the financial year ending 30 September 2013, Red FM's worldwide turnover was €[...] all of which was generated in the State.

Rationale for the Proposed Acquisition

14. The parties state in the notification:

“On 6 March 2013, AIB appointed Mr Kieran Wallace as receiver over the assets of TCH and certain other TCH group companies. Immediately following the appointment of the receiver, the print and online media interests of TCH – which included Irish Examiner, Evening Echo, Western People and several other regional newspaper titles, RecruitIreland.com, Breakingnews.ie and a 21.40% interest in County Mayo Radio Limited (t/a Mid West Radio and held through Western People Limited) – and other non-trading assets of TCH were sold to a new entity, Sappho, which was subsequently acquired by Landmark on the same date. The TCH radio interests were retained by TCH at that time. It is now proposed that the TCH radio interests will also be transferred to the Landmark group. Landmark’s commercial rationale is to reinstate the group relationship that existed between the Landmark print and online media businesses and the TCH radio interests prior to 6 March 2013.”

Third Party Submissions

15. A third party submission was received by the Authority from [...].
16. The [...] expressed the following concern:

“[...]”
17. The [...] submission raised issues which the Authority does not consider to present reasons to believe that the proposed transaction would substantially lessen competition.

Competitive Analysis

18. Landmark, through various subsidiaries, is active in the provision of newspaper and online advertising. Beat FM, WLR FM, and Red FM are all engaged in the provision of radio advertising. The Authority has in previous merger determinations concluded that radio advertising is in a different product market to other media advertising.¹ In particular, in M/07/022 – Thomas Crosbie Holdings/South East Broadcasting, the Authority's market enquiries and analysis found that the TCH newspaper offerings did not compete with WLR FM for advertising revenue. The Authority sees no reason to depart from this view. Accordingly, there is no horizontal overlap between Landmark’s newspaper and online media interests and Beat FM, WLR FM, and Red FM.² Furthermore, other than Landmark’s newspaper and online media interests, Ted Crosbie and Tom Crosbie do not own any other media businesses.

¹ See, for example, Determination No. M/03/033 - Scottish Radio Holdings/FM 104, 5 February 2004; Determination No. M/04/003 - Radio 2000/News 106 Limited, 5 March 2004; Determination No. M/04/078 - Ulster Television plc/Coderidge Limited, 21 January 2004; Determination No. M/07/022 - Thomas Crosbie Holdings/South East Broadcasting, 5 September 2007; and Determination No. M/09/013 – Metro/Herald AM, 6 November 2009.

² The Western People Limited, a subsidiary of Sappho, holds a 21.4% interest in County Mayo Radio Limited (“Midwest Radio”). There is, however, no horizontal overlap between Midwest Radio and any of the three radio stations being acquired by Sappho. Midwest Radio has a licence from BAI to broadcast in County Mayo and, therefore, does not overlap geographically in terms of radio listenership with Beat FM, WLR FM, or Red FM.

19. There is no horizontal overlap between Landmark's newspaper and online media interests and the media interests held by Vienna. As noted above, Vienna holds on trust for a number of individuals a 36% shareholding in Radio Nova. There is no horizontal overlap between Radio Nova and the three radio stations being acquired by Sappho. Radio Nova has a licence from BAI to broadcast in County Dublin and, therefore, does not overlap geographically in terms of radio listenership with Beat FM, WLR FM, or Red FM.
20. There is a horizontal overlap, however, between Beat FM and WLR FM. Previously in M/07/022 - Thomas Crosbie Holdings/South East Broadcasting, the Authority stated the following in paragraphs 40-43:

"40. Despite the complementary nature of both radio stations [Beat FM and WLR FM], a competition concern arises from the fact that, post-acquisition, the only two radio stations that target local advertising in Waterford City and County will come under common control. For an advertiser seeking to target an audience in Waterford City and County under the age of 35, WLR FM represents, to a limited extent due to the difference in geographic coverage and demographics, an alternative option to Beat FM. Although such an advertiser may divide its radio advertising spend between both stations, it can alter the proportion spent on each station depending on the extent of the discounts off the advertising rate card it can negotiate with each station. Thus, both stations currently compete at the margin for advertisers targeting an audience under 35 in Waterford City and County."

"41. Pre-merger, the limited competition that exists between Beat FM and WLR FM is preserved by ensuring each station is operated and managed separately. Except for Des Whelan, who is the founder of both stations, no person who is in the management of one station sits on the board of the other."

"42. Many third parties highlighted the importance of the existence of a separation between the sales teams of the two stations (which is the result of a voluntary undertaking given to the BCI) with respect to competition between the stations and commented that they did not have any concerns with the proposed merger if the existing degree of competition between the stations were to be maintained. Given the limited but not insignificant level of competition between the two stations, the Authority agreed to accept the proposals pursuant to sections 20(3) and (4), as described below, from the merging parties to formalize and strengthen the existing separation between the sales activities of the two stations."

"43. Therefore, the Authority considers that in order to preserve the competition that currently exists at the margin between the two stations going forward, the management of the two radio stations should be kept

separate and there should be a limit to the exchange of certain information.”

21. The parties state the following in the current notification:

“The parties are aware that TCH gave certain undertakings to the Competition Authority in connection with its acquisition of shareholdings in WLR FM and Beat 102-103. Sappho is willing to enter into the same undertakings in relation to those companies, should this be required by the Competition Authority.”
22. On 9 December 2013, the parties submitted proposals under sections 20(3) and (4) of the Act with a view to them becoming binding if the Authority took them into account in making its determination.
23. On 23 December 2013, clarifications on the proposals were sought by the Authority. On 8 and 9 January 2014, the parties submitted revised proposals.
24. The Authority is of the view that the revised proposals offered by the parties will ensure that the competition at the margin that currently exists between Beat FM and WLR FM will be maintained post-transaction.

DETERMINATION

The Competition Authority, in accordance with section 21(2)(a) of the Competition Act, 2002 ("the Act"), and having taken into account the proposals made by the parties in accordance with section 20(3) and section 20(4) of the Act, and the proposals forming part of the basis of its determination, has determined that, in its opinion, the result of the proposed acquisition whereby Sappho Limited will acquire sole control of WKW FM Limited and South East Broadcasting Company Limited and joint control of Siteridge Limited will not be to substantially lessen competition in markets for goods or services in the State and, accordingly, that the proposed acquisition may be put into effect, subject to section 23(9)(a) of the Act and subject to the following:

Proposal

Rinvery Limited ("Rinvery") undertakes that it will procure the following in relation to itself, Landmark Media Investments Limited ("Landmark"), Sappho Limited ("Sappho"), South East Broadcasting Company Limited ("WLR FM") and WKW FM Limited ("Beat FM"), each of their successors and assigns, and the officers and employees of these companies:

1. the operation of sales of radio advertising by each of WLR FM and Beat FM will be entrusted to separate sales advertising teams and these teams will not be amalgamated or consolidated;
2. the "head of sales" or "sales director" for each of WLR FM and Beat FM (reporting to his/her respective chief executive officer) shall be responsible for the day to day operation of sales of radio advertising, negotiations with customers and discounts on the standard rate card in relation to his or her respective company, in each case within the parameters and in accordance with the guidelines set down by the board of directors of that company from time to time;
3. no information concerning the sales of advertising or pricing policy of WLR FM will be disclosed to the management or sales teams of Beat FM, and no information concerning the sales of advertising or pricing policy of Beat FM will be disclosed to the management or sales teams of WLR FM (without prejudice to the provisions of paragraph 4 or to any disclosure made to Des Whelan in his capacity as director of Beat FM in accordance with the provisions of paragraph 7 below);
4. notwithstanding paragraph 3 above, WLR FM's financial controller may continue to provide financial and administrative support to Beat FM provided that any information concerning the sales of advertising or pricing policy of Beat FM acquired or disclosed in connection with the provision of that support is used solely for the purposes of fulfilling that support function and provided further that no such information is disclosed to the management or sales teams of WLR FM (without prejudice to any disclosure made to Des Whelan in his capacity as director of Beat FM in accordance with the provisions of paragraph 7 below);
5. with the exception of Des Whelan, no person who is or becomes a member of the management team (as described in Appendix 1) of WLR FM shall sit on the board of directors of Beat FM and no person who is or becomes a member of the management team of Beat FM shall sit on the board of directors of WLR FM;

6. the composition of management teams and the board of directors of WLR FM and Beat FM initially upon implementation of these undertakings will be as set out in Appendix 1;
7. any detailed non-public information on the day-to-day activities of the sales teams of any of WLR FM or Beat FM disclosed to the directors of that company and/or to the directors of any of Rinvery, Landmark or Sappho may be used only by those directors for the purposes of fulfilling their statutory and common law duties to that company and making strategic and business decisions in relation to that company;
8. for the purpose of monitoring compliance by Rinvery, Landmark, Sappho, WLR FM and Beat FM with these undertakings, Mr. Frank O'Flynn, consultant solicitor at O'Flynn Exhams, 58 South Mall, Cork (or if he is unwilling to act or steps down from this position in the future, such other partner of that firm or another firm as may be appointed by Rinvery (subject to the prior approval of the Authority, such approval not to be unreasonably withheld or delayed)) will act as an independent observer (the "Independent Observer") in relation to Beat FM and WLR FM;
9. the Independent Observer will:
 - a) have access upon request (subject to prior reasonable notice and during the normal hours of business) to the management teams, directors and any documentation of WLR FM and Beat FM reasonably required by him for the purpose of assessing compliance with the foregoing undertakings; and
 - b) have the right to receive notice of and attend meetings of the board of directors of each of WLR FM and Beat FM and receive copies of board minutes and any documentation provided to the directors at such meetings;

provided, in each case, that any information which the Independent Observer receives or becomes aware of may only be used by the Independent Observer for the purpose of reporting to the Authority on compliance with the undertakings listed herein and not for any other purpose (and the Independent Observer shall enter into a separate confidentiality agreement with each of WLR FM and Beat FM for this purpose);

10. the Independent Observer will report generally to the Authority on compliance with the undertakings listed herein and will provide an initial report to the Authority within six months of the proposed acquisition being put into effect and thereafter on an annual basis from 30 January 2015 (with a copy of each such report to be provided to Rinvery and Des Whelan).

These undertakings will come into effect and shall be implemented on Completion as defined in the share purchase agreement dated 30 October 2013 between Thomas Crosbie Holdings Limited (in receivership), Mr Kieran Wallace (as receiver) and Sappho.

These undertakings will be reviewed by the Authority:

- a) on an annual basis after the submission of the Independent Observer's report;

- b) when the licence for WLR FM issued by the Broadcasting Authority of Ireland falls due for renewal;
- c) when the licence for Beat FM issued by the Broadcasting Authority of Ireland falls due for renewal;
- d) on or about 1 February 2018 (if these undertakings are still in force at that date); and
- e) at any time upon the request of Rinvery or Des Whelan where Rinvery or Des Whelan considers that changes to the undertakings are required owing to a change in market or other conditions.

These undertakings will continue to apply as long as Sappho and Mr. Des Whelan each continues to own more than a 5% shareholding in both WLR FM and Beat FM or until such time as the Authority determines that the undertakings are no longer required (whichever is the earlier). Rinvery will provide the Authority with 30 days' written notice of any change in these shareholdings, which Rinvery believes will result in a termination of these undertakings.

Appendix 1

BOARD OF DIRECTORS & MANAGEMENT TEAMS

1. BOARDS OF DIRECTORS

Company	Board of Directors
South East Broadcasting Limited	Tom Murphy (Sappho)
	Thomas Crosbie (Sappho)
	Des Whelan
	Gerard Sheridan
WKW FM Limited	Tom Murphy (Sappho)
	Thomas Crosbie (Sappho)
	Des Whelan
	Gabrielle Cummins

2. PROPOSED MANAGEMENT TEAMS

Company	Person	Position
South East Broadcasting Limited	Des Whelan	Chief Executive Officer
	Billy McCarthy	Head of Programmes
	Liz Reddy	Head of News
	Tim Hassett	Head of Sales
	Michael Byrne	Head of Music
	Lena Murphy	Financial Controller
WKW FM Limited	Gabrielle Cummins	Chief Executive Officer
	Gabrielle Cummins	Programme Controller
	Gale Conway	Head of News and Sport
	Liam Dunne	Sales Director
	Niall Power	Head of Station Sound

For the Competition Authority

Stephen Calkins
Member of the Competition Authority
Director, Mergers Division