



## DETERMINATION OF MERGER NOTIFICATION M/17/017 - LANDMARK/BENCHWARMERS

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### Section 21 of the Competition Act 2002

### Proposed acquisition by Landmark Digital Limited of sole control of BenchWarmers Limited

Dated 2 May 2017

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#### Introduction

1. On 4 April 2017, in accordance with section 18(1)(b) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby Landmark Digital Limited (“LDL”), a wholly-owned subsidiary of Landmark Media Investments Limited (“Landmark”), would acquire sole control of BenchWarmers Limited (“BenchWarmers”).
2. Given that both of Landmark and BenchWarmers carry on a “media business” within the State (as defined in section 28A(1) of the Act), the proposed transaction constitutes a “media merger” for the purposes of Part 3A of the Act.
3. The proposed transaction is to be implemented pursuant to a subscription agreement dated 14 March 2017 (the “Agreement”) between LDL, Neville O’Donoghue and BenchWarmers. Pursuant to the Agreement, LDL will make a financial investment in BenchWarmers in exchange for acquiring a 75% shareholding in BenchWarmers. The investment will involve LDL subscribing for shares in BenchWarmers and making a loan to BenchWarmers of €[...]. Neville O’Donoghue, the founder of BenchWarmers and currently the sole shareholder in BenchWarmers, will hold the remaining 25% shareholding in BenchWarmers post-transaction.<sup>1</sup> Following completion of the proposed transaction, LDL will have sole control of BenchWarmers.
4. In addition, the parties informed the Commission that, as part of the proposed transaction, it is intended that certain assets which are currently owned by Neville O’Donoghue will be transferred to BenchWarmers. In particular, a community trade mark in respect of the “BenchWarmers” name which is currently owned by Neville O’Donoghue, together with any intellectual property rights that Neville O’Donoghue

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<sup>1</sup> The parties informed the Commission that it is proposed that, upon completion of LDL’s subscription for shares in BenchWarmers, a shareholders’ agreement will be put in place between LDL and Neville O’Donoghue which will govern their relationship as shareholders of BenchWarmers. A copy of the agreed form of the shareholders’ agreement was provided to the Commission with the notification.



may have in the contents of the [www.benchwarmers.ie](http://www.benchwarmers.ie) and [www.couchwarmers.com](http://www.couchwarmers.com) websites, will be transferred to BenchWarmers.

## The Undertakings Involved

### Landmark

5. Landmark is a collection of media businesses which publish the following newspaper titles in the State:
  - The *Irish Examiner*, a daily national newspaper;
  - The *Evening Echo*, a daily regional newspaper circulated primarily in Co. Cork;
  - The *Laois Nationalist*, a weekly newspaper circulated in Co. Laois;
  - The *Kildare Nationalist*, a weekly newspaper circulated in Co. Kildare;
  - The *Nationalist & Leinster Times*, a weekly newspaper circulated in Co. Carlow;
  - The *Echo*, *Wexford Echo*, *Gorey Echo* and *New Ross Echo*, weekly newspapers circulated in Co. Wexford;
  - The *Western People*, a weekly newspaper circulated in Co. Mayo;
  - The *Waterford News & Star*, a weekly newspaper circulated in Co. Waterford; and
  - *Roscommon Herald*, a weekly newspaper circulated in Co. Roscommon.
6. Landmark sells advertising space in each of its newspaper titles and online advertising space on the websites of each of its newspaper titles.<sup>2</sup>
7. Landmark, through its wholly-owned subsidiary Sappho Limited (“Sappho”), controls the following two radio stations in the State:
  - *Beat 102 103* which is licensed by the Broadcasting Authority of Ireland (“BAI”) to broadcast in the South East of Ireland (in particular, in counties Waterford, Kilkenny, Carlow, Wexford and Tipperary); and
  - *WLR FM* which is licensed by the BAI to broadcast in Co. Waterford.
8. [...] sells advertising airtime on both of *Beat 102 103* and *WLR FM* but [...] does not sell online advertising space on the websites of these two radio stations.<sup>3</sup>

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<sup>2</sup> In 2016, [...] % of the total revenue generated by Landmark from the sale of online advertising space on the websites of all of its newspapers was accounted for by the sale of online advertising space on [www.irishexaminer.com](http://www.irishexaminer.com).

<sup>3</sup> Sappho [...] owns a 17% shareholding in Siteridge Limited, which owns and operates the radio station *RedFM* which is licensed by the BAI to broadcast in Co. Cork. Landmark informed the Commission that Sappho does not exercise control over Siteridge Limited.



9. LDL, a private limited company incorporated in the State which is a wholly-owned subsidiary of Landmark, operates the online news website, [www.breakingnews.ie](http://www.breakingnews.ie), and the online recruitment website, [www.recruitireland.com](http://www.recruitireland.com). In 2016, LDL generated total revenue from sales of online advertising space on both websites of €[...].
10. For the financial year ending 28 December 2016, Landmark's worldwide turnover was approximately €[...], of which approximately €[...] was generated in the State.

#### *BenchWarmers*

11. BenchWarmers, in which Neville O'Donoghue is currently the sole shareholder, owns the domain names for the following two websites: [www.benchwarmers.ie](http://www.benchwarmers.ie) and [www.couchwarmers.com](http://www.couchwarmers.com). The former is a sports news website while the latter, which is not yet live<sup>4</sup>, will produce entertainment news content. Currently, LDL employs Neville O'Donoghue and other personnel for the purpose of operating and selling online advertising space on [benchwarmers.ie](http://benchwarmers.ie).<sup>5</sup> Following implementation of the proposed transaction, the [benchwarmers.ie](http://benchwarmers.ie) and [couchwarmers.com](http://couchwarmers.com) websites will be operated by BenchWarmers.<sup>6</sup>
12. For the period from 1 October 2015 to 31 December 2016, the total revenue generated from the sale of online advertising space on [benchwarmers.ie](http://benchwarmers.ie) was approximately €[...], all of which was generated in the State.

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

13. The parties state in the notification:

*"The undertakings involved consider the commercial objective of the proposed transaction to be the broadening of the portfolio of advertising options of the Landmark Media Group to existing and potentially new clients by acquiring new audience niches in a young, urban, male, international sphere through BenchWarmers."*

#### **Third Party Submissions**

14. No submission was received.

#### **Competitive Analysis**

15. Landmark is active in the printing, publication and distribution of newspapers (as listed in paragraph 4 above) in the State and the sale of advertising space in each of these newspapers. As noted above, following implementation of the proposed transaction BenchWarmers will sell online advertising space on its website, [www.benchwarmers.ie](http://www.benchwarmers.ie). The Commission's predecessor, the Competition Authority (the "Authority"), has

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<sup>4</sup> The parties informed the Commission that there is no date fixed for [www.couchwarmers.com](http://www.couchwarmers.com) to go live.

<sup>5</sup> The parties informed the Commission that BenchWarmers has not generated any revenue to date from the sale of online advertising space on [www.couchwarmers.com](http://www.couchwarmers.com) since this website is not yet live.

<sup>6</sup> The parties informed the Commission that, once BenchWarmers has been registered for tax and bank accounts opened for it, the responsibility for running the websites will pass to BenchWarmers and that BenchWarmers will absorb all costs and revenues in connection with same. In addition, the parties informed the Commission that the contracts of employment with respect to the persons running [www.benchwarmers.ie](http://www.benchwarmers.ie) will transfer to BenchWarmers once it takes over responsibility for running the websites.



concluded in previous merger determinations that newspaper advertising competes in a different product market to other media advertising platforms (e.g., television, radio and online).<sup>7</sup> The Commission sees no reason to depart from this view for the purpose of assessing the likely competitive impact of the proposed transaction in the State. Thus, the Commission considers that Landmark, when engaging in the sale of advertising space in each of its newspapers, will not compete in the same product market as BenchWarmers, which will be active in the sale of online advertising space on its website, [www.benchwarmers.ie](http://www.benchwarmers.ie).

16. [...] operates two radio stations in the State and sells advertising airtime on both radio stations. The Authority concluded in previous merger determinations that radio advertising competes in a different product market to other media advertising platforms (e.g., newspaper, radio and online).<sup>8</sup> The Commission sees no reason to depart from this view for the purpose of assessing the likely competitive impact of the proposed transaction in the State. Thus, the Commission considers that Landmark, when engaging in the sale of advertising airtime on its two radio stations, will not compete in the same product market as BenchWarmers, which will be active in the sale of online advertising on its website, [www.benchwarmers.ie](http://www.benchwarmers.ie).
17. However, even if newspaper advertising, radio advertising and online advertising were all considered to be in the same product market, the proposed transaction raises no competition concerns in the State since BenchWarmers is likely to generate minimal turnover in the State from the sale of online advertising space (approximately €[...] was generated from the sale of online advertising space on [www.benchwarmers.ie](http://www.benchwarmers.ie) during the period from 1 October 2015 to 31 December 2016). Furthermore, and more significantly, there are a large number of newspapers, radio stations and websites currently selling advertising space/airtime to customers in the State that will act as a competitive constraint on Landmark (and its subsidiary, LDL) post-transaction.
18. There is a minor horizontal overlap between the activities of Landmark (including its subsidiary, LDL) and BenchWarmers in the State with respect to the supply of online advertising space in the State. Landmark sells online advertising space on the websites of each of the newspapers that it operates in the State.<sup>9</sup> Landmark generated total revenue of €[...] from the sale of online advertising space on the websites of all of its newspapers in 2016.<sup>10</sup> Furthermore, Landmark's subsidiary, LDL, sells online advertising space on its two websites [www.breakingnews.ie](http://www.breakingnews.ie) and [www.recruitireland.com](http://www.recruitireland.com). As noted above, LDL generated total revenue of €[...] from sales of online advertising space on both websites in 2016. Following implementation of the proposed transaction, Landmark will sell online advertising space on its website, [www.benchwarmers.ie](http://www.benchwarmers.ie), and intends to commence selling online advertising space on [www.counchwarmers.com](http://www.counchwarmers.com) when it goes live.
19. The Commission considers that this minor horizontal overlap between Landmark and BenchWarmers in the State with respect to the supply of online advertising space raises

<sup>7</sup> See, for example, paragraphs 3.47-3.72 of the Authority's merger Determination in *M/09/013 – Metro/Herald AM* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m09013-metro-herald-am>.

<sup>8</sup> See, for example, paragraphs 3.2-3.37 of the Authority's merger Determination in *M/07/040 – Communicorp/SRH* which can be accessed at <http://ccpc.ie/enforcement/mergers/merger-notices/m07040-communicorp-srh>.

<sup>9</sup> As noted above, Landmark's subsidiary, Sappho, does not sell online advertising space on the websites of its two radio stations, *Beat 102 103* and *WLR FM*.

<sup>10</sup> As noted above, [...] % of this total revenue was accounted for by the sale of online advertising space on [www.irishexaminer.com](http://www.irishexaminer.com).



no competition concerns in the State. BenchWarmers is likely to generate minimal turnover in the State from the sale of online advertising space (approximately €[...] was generated from the sale of online advertising space on [www.benchwarmers.ie](http://www.benchwarmers.ie) during the period from 1 October 2015 to 31 December 2016). This represents [0-5]% of the total value of online advertising in the State in 2015 which was €340 million.<sup>11</sup> Furthermore, unlike the two websites which will be operated by BenchWarmers, none of Landmark's websites (including those currently operated by LDL) are dedicated solely to the supply of sports news or of entertainment news. Finally, there are a large number of competing websites (including websites dedicated solely to the supply of sports news<sup>12</sup> and/or of entertainment news<sup>13</sup>) currently selling advertising space to customers in the State that will act as a competitive constraint on Landmark (and its subsidiary, LDL) post-transaction.

20. The proposed transaction does not raise any vertical competition concerns.<sup>14</sup>
21. In light of the above, the Commission considers that the proposed transaction will not substantially lessen competition in any market for goods or services in the State.

#### Ancillary Restraints

22. In the notification, the parties provided a copy of an agreed form of the shareholders' agreement to be entered into between LDL, Neville O'Donoghue and BenchWarmers which contains a number of restrictive obligations on Neville O'Donoghue. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.<sup>15</sup> The Commission considers these restrictions to be directly related to and necessary for the implementation of the proposed transaction.

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<sup>11</sup> Source: <http://iabireland.ie/digital-adspend-hits-high-of-e340m-with-29-growth-in-2015-iab-pwc-adspend-study-reveals/>.

<sup>12</sup> For example, [www.balls.ie](http://www.balls.ie) and [www.the42.ie](http://www.the42.ie).

<sup>13</sup> For example, [www.entertainment.ie](http://www.entertainment.ie) and [www.evoke.ie](http://www.evoke.ie).

<sup>14</sup> Landmark currently provides a small amount of news content (approximately one or two news stories per month) to the website [www.benchwarmers.ie](http://www.benchwarmers.ie). Landmark informed the Commission [...].

<sup>15</sup> In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its "Commission Notice on restrictions directly related and necessary to concentrations" (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



### **Determination**

The Competition and Consumer Protection Commission, 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 Landmark Digital Limited would acquire sole control of BenchWarmers Limited will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect subject to the provisions of section 28C(1)<sup>16</sup> of the Competition Act 2002.

For the Competition and Consumer Protection Commission

**Patrick Kenny**  
**Member**  
**Competition and Consumer Protection Commission**

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<sup>16</sup> Section 28C(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.