



DETERMINATION OF MERGER NOTIFICATION M/10/012 - MLM/Gaiety/Setanta/JV

Section 21 of the Competition Act 2002

Proposed acquisition by MLM Management Limited and Gaiety Investments of joint control of Setanta Sports Channel Ireland Limited and Setanta Sports Hibernia S.a.r.l

Dated 20 May 2010

Introduction

1. On 05 May 2010, 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 MLM Management Limited ("MLM") and Gaiety Investments ("Gaiety") would acquire joint control of each of Setanta Sports Channel Ireland Limited ("SSCIL") and Setanta Sports Hibernia S.a.r.l. ("Setanta Hibernia S.a.r.l.") the ("Target Companies").
2. On 06 May 2010 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

MLM

3. MLM was incorporated in Ireland in 2009 as an acquisition vehicle to facilitate the acquisition of shares in certain companies in the Setanta Sports Group following the appointment of receivers and administrators over Setanta Sport Holdings Limited and other companies in the Setanta Sports Group. MLM is owned by Leonard Ryan¹, Michael O'Rourke² and Mark O'Meara³. MLM owns a number of companies which comprised the international broadcasting business of the Setanta Sports Group. These companies are active in broadcasting sports television programming outside the State.
4. Currently, MLM holds a 50% interest in Setanta Transmissions Limited with the other 50% interest being held by Gaiety. Setanta

¹ Leonard Ryan and Michael O'Rourke each have a 50% interest in Setanta Radio Limited, a non-trading holding company, which holds a minority non-controlling interest in two Irish radio stations, Newstalk 106 Limited and CK Broadcasting Limited trading as KCLR 96 FM.

² Michael O'Rourke is also the majority owner of MSK Media Limited, which carries out broadcasting activities but is not active in the State.

³ Mark O'Meara was the Chief Operations Officer of the former holding company of the Setanta Sports Group.

Transmissions Limited is engaged in the provision of playout services⁴ to the Target Companies and MLM's international broadcasting business. At present, MLM holds a minority interest in each of the Target Companies. However, it does not exercise control over any of the Target Companies.

5. For the year ending 31 December 2009, the international broadcasting business of MLM generated a worldwide turnover of approximately €[...] million, all of which was generated outside the State. For the same period, Setanta Transmissions Limited generated a turnover of approximately €[...] million in the State.

Gaiety

6. Gaiety is a private holding company, which is mainly active in the promotion of live music and other events through its subsidiary MCD Promotions. Gaiety is also involved in the operation of a number of theatres/venues⁵. For the financial year ending 31 March 2009, Gaiety generated a turnover of approximately €[...] million in the State.
7. Currently, Gaiety owns a 60% interest in each of the Target Companies and exercises sole control over each of them. As noted above, Gaiety has a 50% interest in Setanta Transmissions Limited. Gaiety is also involved in the following companies:
 - (i) Gaiety has a 49.9% interest in Live Nation-Gaiety, which is primarily active in event and festival promotion outside the State;
 - (ii) Gaiety owns Setanta Screens Limited, a supplier of LED screens and related services; and,
 - (iii) Gaiety has a minority interest in Dublin Rock Radio Limited (trading as Phantom 105.2 FM).

The Target Companies

8. The Target Companies, SSCIL and Setanta Hibernia S.a.r.l., are engaged in the broadcasting and production of the Setanta Sports television channels: Setanta Ireland and Setanta Sports 1. These channels are aimed at audiences in the State and Northern Ireland and are dedicated mainly to carrying soccer and rugby sports programming. In the State these channels are sold to customers on a subscription basis mainly through UPC Communications Ireland Limited, the main cable pay-TV operator, and BSkyB Group Plc, the satellite pay-TV operator.

⁴ "Playout" is a term for a range of services which are required to deliver television channels from a broadcaster to its distribution platform. The services are either provided by broadcasters in-house or provided by an independent specialist company that has been contracted to handle the playout for a number of channels from different broadcasters. These services may include: programme scheduling and storage, insertion of advertising and insertion of logos and other graphics.

⁵ Examples include the Gaiety, Olympia and the Ambassador theatres in Dublin.

9. For the financial year ending 31 March 2009, SSCIL generated a turnover of €[...] million in the State. For the year ending 31 December 2009, Setanta Hibernia S.a.r.l. generated a turnover of €[...] million through subscription contracts, the majority of which was achieved in the State.

The Proposed Transaction

10. Under the terms of the proposed transaction a new holding company, Setanta Sports Broadcasting Limited ("Setanta Broadcasting"), will acquire 99.6%⁶ of the shares in SSCIL and 100% of the shares in Setanta Hibernia S.a.r.l. Following completion of the proposed transaction, Gaiety will own 60% of the shares in Setanta Broadcasting and MLM will own 40%. Furthermore, Gaiety and MLM will enter into a Shareholders Agreement for the purposes of regulating the future conduct of the business of each of the Target Companies and the relationship between Gaiety and MLM. Under the terms of this agreement Setanta Broadcasting will be jointly controlled by Gaiety and MLM. Effectively, control of each of the Target Companies will change from sole control by Gaiety to joint control by both Gaiety and MLM.

Rationale for the Proposed Transaction

11. According to the parties, the reorganisation of the Target Companies into a single group will allow the Target Companies to benefit from certain intra-group financing.

Third Party Submissions

12. No submissions were received.

Analysis

13. There are no horizontal overlaps between the undertakings involved in the proposed transaction. The Target Companies are involved in the broadcasting and production of Setanta sports television channels which are aimed at audiences in the State and Northern Ireland. Neither Gaiety nor MLM are engaged in the broadcasting or production of sport channels for audiences in the State.
14. Currently there is a vertical relationship between Gaiety, MLM and the Target Companies. As stated above Setanta Transmissions Ltd is owned by Gaiety and MLM and provides playout services to the Target Companies and to MLM's international broadcasting business. This vertical relationship will continue post transaction and is unlikely to raise competition concerns since all Irish broadcasters provide playout facilities in-house.
15. As noted in paragraphs 3 and 6, Gaiety and two of the owners of MLM have interests in radio stations in the State. The Authority considers that this does not raise any competition concerns in the State for the sale of radio advertising as these radio stations, Newstalk 106 FM, KCLR 96 FM and Phantom 105.2 FM carry different content and target different demographics.

⁶ A private individual will retain 0.4% interest in SSCIL.

16. In light of the above, the Authority considers that the proposed merger does not raise any competition concerns in the State due to the minimal overlap of the activities of the parties in the State.

Ancillary Restraints

17. The proposed transaction imposes non-compete and non-solicitation obligations on Gaiety and MLM in relation to Setanta Broadcasting from the date of the Shareholders' Agreement and terminating one year after the relevant party ceases to be a shareholder in Setanta Broadcasting. 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 whereby MLM Management Limited and Gaiety Investments would acquire joint control of Setanta Sports Channel Ireland Limited and Setanta Sports Hibernia S.a.r.l. 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

Dr. Stanley Wong

Member of the Competition Authority