



## **DETERMINATION OF MERGER NOTIFICATION M/06/059 – IRISH TIMES/ MYHOME**

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

#### **Proposed acquisition by The Irish Times Limited through its wholly-owned subsidiary Sharmal Limited of MyHome Limited**

**Dated 25/09/06**

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### **Introduction**

1. On 25 August 2006 the Competition Authority (“the Authority”), in accordance with Section 18 (1) of the Competition Act, 2002 (“the Act”) was notified, on a mandatory basis, of a proposal whereby the Irish Times Limited (“ITL”) would acquire the entire issued share capital of MyHome Limited (“MyHome”) (“the proposed transaction”) through its wholly-owned subsidiary Sharmal Limited (“Sharmal”).
2. The Authority forwarded a copy of the notification to the Minister and notified the undertakings involved that it considers the acquisition to be a media merger, in accordance with section 23(1) of the Act.
3. The Authority received third party submissions in respect of the proposed transaction which will be discussed below.

### **The Undertakings Involved**

#### ***The Acquirer***

4. Sharmal, the acquirer, is a newly-created transaction vehicle to facilitate the acquisition by ITL of MyHome and is a wholly-owned subsidiary of ITL. ITL, in turn, is a wholly-owned subsidiary of The Irish Times Trust Limited, a company limited by guarantee and established in 1974. The primary objective of The Irish Times Trust Limited is to publish *The Irish Times* newspaper. In 2005 ITL generated a turnover of €105.4 million in the State and €113.2 million worldwide.
5. ITL’s main activities in the State consist of :
  - Publishing: ITL publishes *The Irish Times* newspaper, a daily paid-for national newspaper publication, and (through a joint venture with Fortunegreen) *The Metro*, daily free sheet in the greater Dublin area. On both of these publications it offers advertising space;
  - Contract printing: ITL prints (a) its own title, *The Irish Times*, (b) its joint venture publication, *Metro*, and (c) several third party titles such as the Irish Daily Mail, the Galway Advertiser and the Irish Farmers Journal; and,

- Website Ownership and operation: ITL operates two types of websites: (a) informational websites such as ireland.com; and, (b) advertising websites such as nicemove.ie. Ireland.com incorporates the on-line edition of *The Irish Times*, and includes more than twenty-five stand-alone websites on sports, tourist information, business and news. Several other services are also available through access to Ireland.com such as [addresses@ireland.com](mailto:addresses@ireland.com), web broadcast and an Irish Ancestors website. Content on the Irish Times' websites is available to consumers from Internet and mobile phone platforms.
- Advertising services: An associated activity of ITL is advertising carried by its print publications and on its online offerings:
  - i. In *The Irish Times*, classified and other types of advertising may be placed by advertisers. For its joint venture publication, *Metro*, ITL also provides classified advertising services. However this is limited in respect of property advertising; and,
  - ii. Regarding online advertising, ITL's classified advertising is mainly placed on nicemove.ie. nicemove.ie carries classified advertising in respect of three core areas:
    - (a) property advertising;
    - (b) motor vehicle advertising (through cars.nicemove.ie); and,
    - (c) recruitment/employment opportunities advertising (through jobs.nicemove.ie). nicemove.ie also carries banner advertising and updates on latest news developments in respect of the three core areas advertised which information is sourced from *The Irish Times* from its respective supplements.

### ***The Target***

6. MyHome, the target, provides advertising and listings of new and second-hand (a) residential properties and developments, and, (b) commercial properties on its website - *MyHome.ie*. In September 2005, it added an advertising and listing service for rental and letting through the operation of the website *myhome2let.ie*.
7. MyHome is a private company, limited by shares and was established in 2000. Its main shareholders are estate agents Sherry Fitzgerald Group, PBG and Paul Newman and Keith Lowe trading as Douglas Newman Good Residential, which together account for more than 50% of the shareholding. AIB (Shareholdings and Investments) Limited also own a significant shareholding in MyHome.
8. In addition to property listings and advertising, the MyHome websites also:
  - carry banner advertising and 'button' advertising for third parties;

- provide direct links to the websites of several (paying) dedicated mortgage providers; and,
  - allow users of the MyHome websites to make immediate online applications for mortgages to the six dedicated mortgage providers.
9. The target also offers an online service called newaddress.ie (in which MyHome has a 65% shareholding) that allows the change of a person's address to be communicated automatically to over seventy commonly-used companies and service providers such as the ESB, NTL and Bord Gais. Several other online services ancillary to property purchasing/ letting are also offered such as 'Experts and Services' and 'Home and Gardens Products'.

## **Analysis**

10. The activities of the undertakings involved overlap in respect of property advertising: (a) in the acquirer's newspapers, (*The Irish Times* and the *Metro*) and (b) on the acquirer's website (nicemove.ie) and through the target's website (MyHome.ie).
11. The undertakings involved have submitted that online advertising and print advertising may be considered substitutes for each other. The relevant market is thus the provision of property advertising services in the State which includes both online and print advertising. However, the undertakings involved also recognise that there could be an alternative market definition, online property advertising. This reflects the fact, acknowledged by the undertakings involved, that there are elements of complementarity between the online and print property advertising. The Authority has decided to adopt the narrow market definition, online property advertising. To the extent that print property advertising is a substitute for online property advertising and there are competition concerns, such advertising will be viewed as a possible competitive constraint.

### **Online advertising for property**

12. In respect of online advertising of property, MyHome.ie is one of the leading providers of online listing and advertising services<sup>1</sup>. Its service is targeted at estate agents and while national in scope it appears to feature properties that attract a more Dublin-centric online readership/viewership. It competes against other providers of online property advertising/listing services such as nicemove.ie, daft.ie, propertyadvertiser.com, funda.ie and both individual estate agents' websites and websites representing groups of estate agents (e.g. propertypartners.ie).
13. Currently all estate agents wishing to use MyHome are required to sign an agreement ("Internet Advertising Agreement") in which, *inter alia*, the

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<sup>1</sup> In terms of the number of property listings, in 2006, MyHome accounts for [...]% of the market and nicemove.ie, [...]%. In terms of revenue, MyHome's market share is much higher and nicemove.ie lower. However, the revenue estimates of market share are not as reliable as the listings.

estate agent agrees to list its properties exclusively with MyHome<sup>2</sup>. This exclusivity clause does not prevent the estate agent from advertising or listing its properties on its own website(s). The Internet Advertising Agreement is capable of being terminated, at either end, by a notice period of thirty-days in writing. There are no penalties for termination. The target charges a fee per property advertised by the estate agent rather than providing for a flat fee to list all properties<sup>3</sup>.

14. Other online advertising providers have successfully differentiated their service offering from the MyHome service product by using each or a combination of the following:

- flat rate fees;
- no restriction on how many properties may be advertised;
- no exclusivity requirement;
- advertising agreements may be monthly/annual; and,
- not estate agent-focused with individuals being able to list properties for sale.

15. Barriers to entry to online advertising in property do not appear to be high, a fact supported by the Authority's investigation, the submissions of the undertakings involved and third-party submissions. Nevertheless, there is likely to be some element of sunk costs in terms of design and promotion costs.

16. While not a consequence of the proposed acquisition the Authority did, however, consider whether restrictions placed on estate agents due to the operation of the Internet Advertising Agreement and preventing them from advertising on alternative property advertising websites, was likely to prevent effective competition from potential entrants offering these online property advertising/listing services i.e., without access to estate agents new entrants would not be capable of operating as online property advertisers.

17. The Authority's investigation has shown that estate agents signing up to the MyHome Internet Advertising Agreement have, despite its existence, advertised their properties with other online property advertisers. Further, the target has submitted that it has never instituted proceedings against such advertisers in this regard.

18. Furthermore the exclusivity clause operated by MyHome in its Internet Advertising Agreement has not prevented other online property advertisers from entering the market and competing effectively with MyHome either through signing up estate agents who currently advertise with My Home and/or through product differentiation, as highlighted above.<sup>4</sup>

19. The Authority, therefore, has concluded that in this regard, no competition concerns arise.

### ***Bundled Advertising for property: Print and online***

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<sup>2</sup> The client of the estate agent may, however, refuse to agree to the inclusion of their property on the MyHome website.

<sup>3</sup> The Authority understands that no litigation has been brought by the target in respect of breach of terms and conditions of advertising as set out in the Internet Advertising Agreement, specifically in respect of non-compliance with the exclusive requirement to advertise properties with MyHome only.

<sup>4</sup> Since MyHome entered the online property market in 2001, there have been at least 14 other online property website established.

20. The Authority considered whether post-merger the merged entity would offer a bundled advertising package using its print and online offerings that would be capable of giving rise to foreclosure concerns which would prevent third-party property advertisers (online and/or print) from competing for advertising effectively or at all.
21. The Authority's investigation has revealed that there is sufficient competition from disparate alternative providers of property advertising to prevent such a scenario occurring. Moreover (a) there are no barriers to entry which exist that would prevent other providers of print property advertising from developing online property advertising services; (b) switching costs to customers (i.e., estate agents) are low; and, (c) the market for online property advertising is characterised by rapid growth.
22. In addition the acquirer has submitted and the Authority accepts that there is limited 'bundling' activities between its online advertising offerings and its print advertising. Currently, the two sources of classified advertising – nicemove.ie and *The Irish Times* – are operated separately but under the same source of control.
23. Several quasi-bundling packages are offered in limited situations but are not substantial in terms of the revenue derived from their operation. There are no exclusivity agreements or clauses with which actual and/or potential advertisers with the *The Irish Times* or with nicemove.ie must contend in placing advertising with either *The Irish Times* or with nicemove.ie.
24. The Authority understands that post-merger, the target online service will not be managed and/or operated by staff of *The Irish Times* but will continue to be operated as currently. The acquirer has indicated that for the foreseeable future, there are no plans to merge the advertising activities of MyHome.ie and the acquirer's own online and/or print advertising services.
25. The Authority, therefore, has concluded that in this regard, no competition concerns arise.

#### **Ancillary Restraints**

26. The acquirer and the target have agreed to several restrictive covenants which the undertakings involved submit are fully ancillary and related to and essential to the proposed transaction.
27. Generally, the restrictive ancillary restraints take the form of (a) a restriction on competition/ competing post-merger for a specified time and (b) a restriction in relation to advertising for a specified period of time.
28. The non-compete clause prevents certain shareholders of the target from competing with the merged entity by getting involved in third-party competing on-line property listing services (with the exception of their own online property advertising websites) for a period of two years post completion of the proposed transaction. A non-solicitation clause, imposed for a period of two years post-completion of the agreement requires certain shareholders to refrain from soliciting certain customers of the target. Finally a non-solicitation of certain employees of the target is required for a limited period and only in certain circumstances.

29. On consideration of the first set of ancillary restraints, the Authority has concluded that the restrictive covenants are directly related to and necessary for the protection of the business equity to be transferred pursuant to the share purchase agreement between the acquirer and the target.
30. The restrictive covenants are directed specifically at the scope of the business activities of the undertakings involved and are limited in temporal scope. The proposed ancillary restraints do not, therefore, give rise to competition concerns.
31. The second set of ancillary restraints concern the post-merger advertising activities of certain shareholders of MyHome. Generally, this set of shareholders have agreed to enter into an exclusivity agreement for a set period of time, whereby they agree to advertise their properties (as they currently do) only with the post-merger entity (i.e. only with MyHome).
32. The ancillary restraints in this regard do not apply to *The Irish Times* or *Metro* or *nicemove.ie*. and essentially maintain the status quo that exists currently: the shareholders in question only advertise their property listings with their own websites and with MyHome.
33. The shareholders in question are an intrinsic part of the value of MyHome and as such their continued participation for the period set by the share purchase agreement is essential in order to ensure the transfer of the value of the business equity being purchased by the acquirer.
34. The Authority has concluded that the restrictive covenants are directly related to and necessary for the protection of the business equity to be transferred pursuant to the share purchase agreement between the acquirer and the target. The proposed ancillary restraints do not, therefore, give rise to competition concerns.

### ***Third-Party Submissions***

35. As noted, the Authority received third-party submissions in respect of the proposed transaction.
36. Generally, the third-party submissions can be summarised as (a) concerns in respect of the continued operation of the Internet Advertising Agreement operated by MyHome.ie and (b) concerns arising from the possibility of bundling, post-merger, of property advertising on *The Irish Times* and/or *Metro* and on the post-merger online offerings of MyHome.ie and/or *nicemove.ie*.
37. In respect of the first category of concerns identified by third party submissions, the Authority has addressed this in paragraphs 12 to 19 above and has concluded that while it is not a consequence of the merger its continued operation does not give rise to competition concerns in this instance.
38. In respect of the second category of concerns identified by third party submissions, the Authority, for the reasons set out in paragraphs 20-25 above has concluded that no competition concerns arise.

**Determination**

The Competition Authority, in accordance with Section 21(2) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by the Irish Times Limited through Sharmal Limited of MyHome Limited will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect.

**For the Competition Authority**

Dr. Paul K. Gorecki  
Member of the Competition Authority