

**DETERMINATION OF MERGER
NOTIFICATION M/17/068 -**

IRISH TIMES/SAPPHO (EXAMINER)

Dated 24 April 2018



1. INTRODUCTION

Introduction

- 1.1 On 14 December 2017, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (the “Commission”) received notification of a proposed transaction whereby The Irish Times Designated Activity Company (“ITD”), through its wholly-owned subsidiary Palariva Limited (“Palariva”), would acquire sole control of Sappho Limited (“Sappho”) from Landmark Media Investments Limited (“LMI”) (the “Proposed Transaction”).
- 1.2 Given that both ITD and Sappho 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.
- 1.3 The Proposed Transaction is to be implemented pursuant to a Share Purchase Agreement (“SPA”) dated 5 December 2017 between LMI and Palariva.

The Undertakings Involved

The Acquirer - ITD

- 1.4 ITD is engaged in the following business activities in the State:
- the publication of *The Irish Times*, a daily national newspaper, and its website *irishtimes.com*;
 - the operation of the following three websites: *myhome.ie*, *irishracing.com* and *myantiques.ie*;
 - the sale of newspaper advertising in its print edition of *The Irish Times*;
 - the sale of online advertising on *irishtimes.com*, *myhome.ie*, *irishracing.com* and *myantiques.ie*;
 - the hosting of a number of podcasts;
 - the provision of contract printing services to third party newspaper publishers;¹ and
 - the provision of training courses.
- 1.5 For the financial year ending 31 December 2016, ITD’s worldwide turnover was approximately €82 million, the vast majority of which, according to the notification, was generated in the State.

The Target - Sappho

¹ ITD currently prints all of the newspapers published by Sappho in the State.



- 1.6 Sappho, a private limited company wholly-owned by LMI, is engaged in the following business activities in the State:
- the publication of the *Irish Examiner*, a daily national newspaper, and its website *irishexaminer.com*;
 - the publication of the *Evening Echo*, a daily evening newspaper circulated primarily in Co. Cork, and its website *eveningecho.ie*;
 - the publication of the following six weekly regional newspapers: *Laois Nationalist*, *Kildare Nationalist*, *Carlow Nationalist*, *Western People*, *Waterford News and Star* and *Roscommon Herald*;²
 - the operation of the following three websites: *breakingnews.ie*, *recruitireland.com* and *benchwarmers.ie*;³
 - the sale of newspaper advertising in each of the newspapers that it publishes; and
 - the sale of online advertising on each of the websites that it operates.⁴
- 1.7 Sappho is also active in the radio sector in the State, through its ownership of the following two radio stations:
- *Beat 102-103* which is licensed by the Broadcasting Authority of Ireland (“BAI”) to broadcast in the South East of Ireland (comprising counties Wexford, Waterford, Carlow, Kilkenny and south Tipperary); and
 - *WLR FM* which is licensed by the BAI to broadcast in Co. Waterford.
- 1.8 Sappho also owns a minority shareholding in Siteridge Limited, whose subsidiary, Red FM Limited, operates the radio station *RedFM* which is licensed by the BAI to broadcast in Co. Cork.⁵
- 1.9 For the 53 weeks ending 1 January 2017, Sappho’s worldwide turnover was €47.3 million, the vast majority of which, according to the notification, was generated in the State.

Rationale for the Proposed Transaction

- 1.10 The parties state the following in the notification:

“ITD intends to retain the core identity and independence of the respective newspaper publishing titles. Each will retain

² Sappho also publishes the websites of each of these six weekly regional newspapers, namely: *laois-nationalist.ie*, *kildare-nationalist.ie*, *carlow-nationalist.ie*, *westernpeople.ie*, *waterford-news.ie* and *roscommonherald.ie*.

³ The acquisition by LMI of BenchWarmers Limited (which owned the domain name for *benchwarmers.ie*) was approved by the Commission on 2 May 2017 and the determination can be accessed at

<https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-17-017-Landmark-BenchWarmers-Public.pdf>

⁴ Sappho also hosts the Paper Talk podcast.

⁵ As part of the Proposed Transaction, ITD will acquire the minority stake currently held by Sappho in Siteridge Limited.



their editorial integrity. The overall increase in audience allows the group to build a digital platform with a strong reach, countrywide and internationally. The planned consolidation also presents the opportunity to strengthen and grow existing print advertising revenues while helping to secure contract print revenues for ITD.”

“From Sappho's perspective, the Proposed Transaction represents an opportunity to secure the long-term future of its newspaper titles and other businesses.”

Preliminary Investigation (“Phase 1”)

Contacts with the Undertakings Involved

- 1.11 On 25 January 2018, the Commission served a Requirement for Further Information (“RFI”) on ITD, Palariva, LMI and Sappho, pursuant to section 20(2) of the Act. This adjusted the deadline within which the Commission was required to conclude its assessment of the Proposed Transaction in Phase 1.
- 1.12 Upon receipt of all of the responses to the RFI, the “appropriate date” (within the meaning of section 19(6)(b)(i) of the Act) became 9 February 2018.⁶
- 1.13 During the Phase 1 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties.

Third Party Submissions

- 1.14 During the Phase 1 investigation, the Commission received one third party submission concerning employment issues in one of the newspapers published by Sappho in the State. The Commission considers that this third party submission raises no competition issues in relation to the Proposed Transaction.

Market Enquiries

- 1.15 During the Phase 1 investigation, the Commission circulated questionnaires to various third parties, including:
- Institute of Advertising Practitioners in Ireland (“IAPI”), the representative organisation for the marketing and communications sector in the State;
 - 35 advertising customers of ITD and LMI;⁷
 - 5 competitors of ITD and LMI currently active in the publication and sale of daily national newspapers and the sale of daily national newspaper advertising in the State; and

⁶ The “appropriate date” is the date from which the time limits for making both Phase 1 and Phase 2 determinations begin to run.

⁷ This comprises 22 direct advertisers and 13 advertising agencies.



- BAI.

1.16 The Commission received a full response from most of the third parties to whom it sent a questionnaire and, in each case, the Commission also contacted those third parties by telephone and/or e-mail to seek further detail regarding those responses.

Phase 1 Determination

1.17 Having considered all the available information in its possession at the time, the Commission was unable to form the view at the conclusion of the Phase 1 investigation that the result of the Proposed Transaction would not be to substantially lessen competition in any market for goods or services in the State.

1.18 On 22 March 2018, the Commission determined, in accordance with section 21(2)(b) of the Act, to carry out a full investigation under section 22 of the Act.

Full Investigation (“Phase 2”)

Third Party Submissions

1.19 No third party submission was received by the Commission during the Phase 2 investigation.

Market Enquiries

1.20 During the Phase 2 investigation, the Commission continued the process, initiated during Phase 1, of seeking the views of third parties, including advertising customers and competitors of ITD and LMI.

1.21 The Commission also circulated a questionnaire to third parties who might have expressed an interest in acquiring Sappho.

Contacts with the Undertakings Involved

1.22 During the Phase 2 investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the notifying parties.



2. INDUSTRY BACKGROUND – NEWSPAPER PUBLISHING AND ADVERTISING

- 2.1 The newspaper publishing and advertising industry has been subject to significant changes in recent years. This section describes some of the recent trends in newspaper publishing and advertising in the State.
- 2.2 Since newspapers satisfy the needs of both readers and advertisers, an assessment of the nature of competition in the newspaper industry requires a consideration of the interaction between advertisers and readers. This type of assessment is typically carried out in the context of a two-sided market analysis where two groups interact through a particular medium (e.g., a newspaper) that enables each group to achieve their inter-related objectives. In this instance, newspapers wish to attract advertisers on one side and readers on the other side to form an audience for advertisers. An advertiser's demand for advertising space in a particular newspaper depends on, amongst other things, the size and demographic of the newspaper's readership and its level of circulation.

Decline in Newspaper Circulation

- 2.3 Newspaper circulation has declined significantly in the State in the past decade. This decline appears to be primarily as a result of the increasing consumption of news online, including through social media websites such as Facebook, Twitter, Instagram, and Snapchat.
- 2.4 The average daily circulation of *The Irish Times* in the State declined by 29% between 2013 and 2017. Similarly, the average daily circulation of the *Irish Examiner* in the State declined by 27% between 2013 and 2017.

Increase in Digital Subscriptions to News Content online

- 2.5 While newspaper circulation has been in decline in the State in recent years, there has been a significant increase in the number of people paying for news content online.
- 2.6 Information provided by ITD to the Commission indicates that the total number of digital subscribers to *irishtimes.com* increased by [...] % between 2014 and 2017.⁸ ITD had over [...] digital subscribers to *irishtimes.com* in 2017. The total revenue generated by ITD from digital subscribers to *irishtimes.com* increased by [...] % between 2014 and 2017.
- 2.7 [...].

Decline in Newspaper Advertising

- 2.8 Given the significant decline in newspaper circulation in the State in recent years and the two-sided nature of the newspaper industry, it is unsurprising that the revenue

⁸ This increase is largely attributable to readers of the print version of *The Irish Times* migrating to become digital subscribers to *irishtimes.com*.



generated by newspaper publishers from the sale of newspaper advertising has also declined in recent years.

- 2.9 Information provided to the Commission by ITD indicates that the total revenue generated by *The Irish Times* from the sale of newspaper advertising declined by approximately [...] % between 2013 and 2017. The total revenue generated by the *Irish Examiner* from the sale of newspaper advertising declined by approximately [...] % over the same period.

Growth in Online Advertising

- 2.10 As people spend more time online, there has been a consequent increase in online advertising in the State in recent years. Total online advertising spend in the State increased from €134 million in 2013 to €491 million in the State in 2017.⁹
- 2.11 The revenue generated by newspaper publishers from the sale of online advertising on their websites has also increased in recent years. Information provided to the Commission by ITD indicates that the revenue generated by *The Irish Times* from the sale of online advertising increased by [...] % between 2013 and 2017. The total revenue generated by the *Irish Examiner* from the sale of online advertising increased by [...] % over the same period.

⁹ These figures are taken from a report published by IAB Ireland and PwC entitled “*Online Adspend Study for FY 2017*” which can be accessed at <https://iabireland.ie/iab-pwc-online-adspend-fy-2017-infographic/>.



3. RELEVANT PRODUCT AND GEOGRAPHIC MARKETS

Horizontal Overlap

3.1 There is a horizontal overlap between ITD and Sappho in the State with respect to the following business activities:

- The publication and sale of daily national newspapers;
- The sale of advertising in daily national newspapers; and
- The sale of online advertising.¹⁰

Relevant Product and Geographic Markets

Views of the Undertakings Involved

3.2 The parties state the following in the notification:

“The parties consider that quality daily Irish newspapers are distinguished from other types of newspaper as follows: (i) 'Quality' v 'Tabloid' newspapers: in two 2003 enforcement decisions, the [Competition Authority] distinguished between 'quality' and 'tabloid' newspapers. The two main reasons for this distinction were the different readerships (i.e., buyers from different social groups) and secondly, substantial differences in price between the two formats; (ii) 'Daily' v 'Sunday' newspapers: In the 2003 [enforcement decisions], the [Competition Authority] also distinguished between Sunday and daily newspapers – the former tending to be more expensive and contain more feature material than the latter; (iii) Irish v imported: in addition, although it examined the possibility of a single product market comprising Irish and UK quality daily newspapers (given the relatively high proportion of [United Kingdom] newspapers circulating in [the State]), the [Competition Authority] ultimately decided that these were two separate product markets.”

“The [Competition Authority] also held that this geographic market is national. Despite the passage of time since the 2003 [enforcement decisions], the parties consider that the distinctions observed at the time remain accurate and therefore there is no reason to depart from this viewpoint. That said, the parties believe that both

¹⁰ There is no horizontal overlap between ITD and Sappho in the State with respect to the following business activities: (a) the publication and sale of regional/local newspapers; (b) the sale of regional/local newspaper advertising; and (c) the sale of radio advertising.



[United Kingdom] quality newspapers and Irish tabloids exert a competitive constraint on their respective titles.”

Views of the Commission

3.3 In its merger determination in *M/09/013 – Metro/Herald AM* (the “2009 Decision”),¹¹ the Commission’s predecessor, the Competition Authority (the “Authority”), reached the following conclusions in relation to the relevant product market:

- There are separate markets for readers and advertisers given the two-sided nature of the newspaper industry (see paragraphs 3.5 and 3.6 of the 2009 Decision);
- Local newspapers do not compete in the same advertising market as daily newspapers (see paragraphs 3.29-3.33 of the 2009 Decision);
- Sunday newspapers do not compete in the same advertising market as daily (Monday to Saturday) newspapers (see paragraphs 3.35-3.40 of the 2009 Decision); and
- Newspaper advertising is in a separate product market from other media advertising platforms (see paragraphs 3.47-3.72 of the 2009 Decision).

3.4 The 2009 Decision included ‘quality’ daily national newspapers in the same advertising market as ‘tabloid’ daily national newspapers. In light of the decisional practice of the Commission and the absence of any evidence to the contrary in the Commission’s market investigation, the Commission considers that there is no reason to depart from this view on the relevant product market.

3.5 During the investigation, the Commission found evidence to indicate that publishers of daily national newspapers in the State face a growing competitive constraint from a wide range of free online news content (e.g., the websites of large media broadcasters such as RTÉ, BBC, The Guardian, etc.) and social media websites such as Facebook, Twitter, Instagram, and Snapchat. Newspaper circulation and advertising have declined significantly in the State in the past decade, primarily as a result of the increasing consumption of news content online. However, in light of the previous decisional practice of the Commission/the Authority and the absence of any strong evidence to the contrary arising from the Commission’s market enquiries during the investigation, the Commission considers that there is no reason to depart from the views on the relevant product market set out in the 2009 Decision. The growing competitive constraint from publishers of free online news content was taken into account by the Commission when assessing the likely competitive impact of the Proposed Transaction.

3.6 With respect to the relevant geographic market, given that daily national newspapers are circulated throughout the State, the Commission considers that the relevant geographic market is the State.

¹¹ This determination can be accessed at <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/05/M-09-013-Phase-2-Determination.public.pdf>



3.7 Thus, in order to determine whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its competitive impact by reference to the following product and geographic markets:

- the publication and sale of daily (Monday to Saturday)¹² national newspapers in the State;
- the sale of advertising in daily (Monday to Saturday) national newspapers in the State; and
- the sale of online advertising in the State.

¹² During the investigation, the Commission found some evidence to suggest that Saturday national newspapers compete to some extent with Sunday national newspapers in the State. In recent years, newspaper publishers have increased the content in the Saturday edition of daily national newspapers to rival the greater content typically found in most Sunday national newspapers. The Saturday edition of some daily national newspapers, such as *The Irish Times* and the *Financial Times*, remain on sale in retail outlets on a Sunday. Furthermore, unlike the cover prices of the Monday-to-Friday edition of daily national newspapers in the State which have been relatively static in recent years (for example, the current cover price of the Monday-to-Friday edition of each of *The Irish Times*, the *Irish Examiner* and the *Irish Independent* has been €2.00 since December 2013), the cover prices of the Saturday edition of many daily national newspapers have increased in recent years (primarily as a result of greater content) and are broadly comparable with the cover prices of Sunday national newspapers currently published in the State. Notwithstanding this evidence, however, the Commission considers that it is not sufficient to depart from the view on the relevant product market set out in the 2009 Decision, namely that Sunday national newspapers do not compete in the same advertising market as daily (Monday to Saturday) national newspapers.



4. COMPETITIVE ASSESSEMENT

(i) The Publication and Sale of Daily National Newspapers in the State

4.1 The Commission conducted a detailed competitive assessment of the likely competitive impact of the Proposed Transaction in the market for the publication and sale of daily national newspapers in the State.

Market Structure

4.2 Paragraph 3.1 of the Commission’s “Guidelines for Merger Analysis” states that “A central element in assessing the competitive impact of a merger is identifying its effect on market structure.”¹³ Market structure can be characterised by the number, size and distribution of firms in a market. A merger or acquisition will have an impact on market structure as the merger parties which were two firms pre-acquisition become one firm post-acquisition.

4.3 Table 1 below lists estimated shares in the market for the publication and sale of daily national newspapers in the State over the period July-December 2017.

Table 1: Daily National Newspaper Circulation in the State, July-December 2017

Newspaper	Average Circulation	Market Share ¹⁴ (%)
<i>Irish Independent</i>	90,107	24.2
<i>The Irish Times</i>	61,049	16.4
<i>Irish Sun</i>	56,488	15.2
<i>Irish Daily Star</i>	48,686	13.1
<i>Irish Daily Mail</i>	37,523	10.1
<i>Irish Mirror</i>	32,055	8.6
<i>Irish Examiner</i>	27,589	7.4
<i>The Times</i>	10,111	2.7
<i>Daily Express</i>	2,483	0.7
<i>Financial Times</i>	2,273	0.6
<i>The Guardian</i>	2,152	0.6
<i>The Daily Telegraph</i>	2,096	0.6
Total	372,612	100

Source: The Commission, based on ABC circulation data.¹⁵

4.4 Following completion of the Proposed Transaction, *The Irish Times* and the *Irish Examiner* will together account for approximately 23.8% of the market for the publication and sale of daily national newspapers in the State. The *Irish Independent*

¹³ The Commission’s “Guidelines for Merger Analysis” can be accessed at <https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/CCPC-Merger-Guidelines-1.pdf>

¹⁴ The estimated market shares have been rounded to the nearest decimal point.

¹⁵ This data can be accessed at <http://www.ilevel.ie/media-blog/print/102971-irish-newspaper-circulation-july-dec-2017-island-of-ireland-report-2>



will remain the largest daily national newspaper in the State with a circulation share of approximately 24.2%.

- 4.5 Table 2 below lists estimated shares for each newspaper publisher in the market for the publication and sale of daily national newspapers in the State over the period July-December 2017.

Table 2: Daily National Newspaper Circulation by Newspaper Publisher in the State, July-December 2017

Newspaper Publisher	Average Circulation	Market Share (%) ¹⁶
Independent News & Media plc (“INM”) ¹⁷	114,450	30.1
News Corporation ¹⁸	66,599	17.9
ITD	61,049	16.4
Daily Mail Group ¹⁹	37,523	10.1
Trinity Mirror plc ²⁰	32,055	8.6
LMI	27,589	7.4
Northern & Shell ²¹	26,826	7.2
Nikkei ²²	2,273	0.6
Guardian Media Group ²³	2,152	0.6
Telegraph Media Group ²⁴	2,096	0.6
Total	372,612	100

Source: The Commission, based on ABC circulation data.

- 4.6 Table 2 illustrates that INM is the largest publisher of daily national newspapers in the State with a market share of approximately 30% in the publication and sale of daily national newspapers in the State. Following completion of the Proposed Transaction, ITD will become the second-largest daily national newspaper publisher in the State with a market share of approximately 23.8%.

Market Concentration

- 4.7 Market concentration refers to the degree to which production/supply in a particular market is concentrated in the hands of a few large firms. The most commonly used measure of concentration is the Herfindahl-Hirschman index (“HHI”), which is defined

¹⁶ The estimated market shares have been rounded to the nearest decimal point.

¹⁷ INM publishes the *Irish Independent* and currently owns a 50% share in Independent Star Limited which publishes the *Irish Daily Star* in the State.

¹⁸ News Corporation publishes the *Irish Sun* and *The Times* in the State.

¹⁹ Daily Mail Group publishes the *Irish Daily Mail* in the State.

²⁰ Trinity Mirror plc publishes the *Irish Daily Mirror* in the State.

²¹ Northern & Shell publishes the *Daily Express* and currently owns a 50% share in Independent Star Limited which publishes the *Irish Daily Star* in the State. The proposed acquisition by Trinity Mirror plc of Northern & Shell Network Limited, International Distribution 2018 Limited and a 50% share of Independent Star Limited was notified to the Commission on 9 February 2018. For more information, please see

<https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m18016-trinity-mirror-northern-shell/>

²² Nikkei publishes *The Financial Times* in the State.

²³ Guardian Media Group publishes *The Guardian* in the State.

²⁴ Telegraph Media Group publishes *The Daily Telegraph* in the State.



as the sum of the squares of the market shares of all firms participating in the market. According to the Commission's "*Guidelines for Merger Analysis*",²⁵ any market with a post-merger HHI greater than 1,000 may be regarded as concentrated and any market with a post-merger HHI greater than 2,000, may be regarded as highly concentrated. In a concentrated market, a change in the pre-merger HHI compared to the post-merger HHI of less than 250 is "unlikely to cause concern". In a highly concentrated market, a change in the pre-merger HHI compared to the post-merger HHI of less than 150 is "unlikely to cause concern". Therefore, if the post-merger HHI is above 2,000 and the change in the HHI is greater than 150, this indicates that firms in that market may be able to exercise market power.

- 4.8 Based on the market share estimates set out in Table 2 above, the market for the publication and sale of daily national newspapers in the State is highly concentrated. The HHI following implementation of the Proposed Transaction would be over 2,000. Furthermore, the change in the HHI would be approximately 242 which, as set out in paragraph 3.10 of the Commission's "*Guidelines for Merger Analysis*", means that the Commission could not conclude that the Proposed Transaction is unlikely to cause concern and thus had to intensify its analysis of the competitive impact of the Proposed Transaction. Other factors, including closeness of competition between the merging parties, were considered before the Commission could reach a definitive conclusion as to whether the Proposed Transaction would be likely to lead to a substantial lessening of competition.

Competitive Effects Analysis

- 4.9 In this section, the Commission sets out its analysis of the likely competitive effects of the Proposed Transaction in the market for the publication and sale of daily national newspapers in the State.

Views of the Notifying Parties

- 4.10 In the notification submitted to the Commission dated 14 December 2017, the parties state the following:

"[...]"

Views of the Commission

- 4.11 Assessing the competitive effects of the Proposed Transaction required the identification of any relevant theories of harm (i.e., how the Proposed Transaction could result in a substantial lessening of competition) and an analysis of those theories of harm through an evaluation of the available evidence.
- 4.12 The Commission focused on two theories of harm as part of its assessment of the likely competitive impact of the Proposed Transaction in the market for the publication and sale of daily national newspapers in the State: unilateral effects and coordinated effects.

²⁵ See paragraph 3.10 of The Commission's "*Guidelines for Merger Analysis*".



Unilateral Effects

- 4.13 Unilateral effects, as explained in paragraph 4.8 of the Commission's "Guidelines for Merger Analysis", occur when "a merger results in the merged entity having the ability and the incentive to raise prices at its own initiative and without coordinating with its competitors."
- 4.14 In considering the likelihood of unilateral effects occurring following implementation of the Proposed Transaction, the Commission assessed a number of factors including the closeness of competition between *The Irish Times* and the *Irish Examiner*. A merger or acquisition between two close competitors is highly likely to result in unilateral effects including an increase in price.

Closeness of Competition

- 4.15 A merger may give rise to unilateral effects if it eliminates or weakens competition between sellers of differentiated products who previously competed on the basis of price and depending on the closeness of the merging firms' products.
- 4.16 While *The Irish Times* and the *Irish Examiner* are competitors in the market for the publication and sale of daily national newspapers in the State, the Commission has found there is no evidence to suggest that the newspapers are each other's closest competitors. This view is based on the evidence described below.

Internal Documentation

- 4.17 During the Phase 1 investigation, the Commission sent a formal RFI to ITD requesting the provision of certain internal documentation relating to the Proposed Transaction. Internal documentation provided to the Commission by ITD suggests that ITD perceives *The Irish Times* and the *Irish Examiner* to have readerships located in different parts of the State.
- 4.18 For example, an indicative offer letter from ITD to LMI dated 16 March 2017 contains the following statement:

"Our readership and customer base has limited crossover so the audience reach of the combined provides some revenue opportunities which are not available to us as standalone entities."

- 4.19 A document provided to the Commission by ITD entitled "Project Valentine Update to Board" dated 17 March 2017 contains the following statement:

"[...]."

- 4.20 Further, internal documentation provided to the Commission by ITD concerning changes in the cover price of *The Irish Times* over the period 2000-2018 suggests that ITD perceives the *Irish Independent* to be a close competitor to *The Irish Times*.



- 4.21 For example, an internal document provided by ITD entitled “Board Minutes 19 May 2011”, which discusses a proposed increase in the cover price of *The Irish Times*, contains the following statement:

“[...]”

Views of Advertising Customers and the Institute of Advertising Practitioners in Ireland

- 4.22 As described above, during the Phase 1 investigation the Commission circulated a questionnaire to the notifying parties’ top 10 direct newspaper advertising customers and top 10 advertising agencies in the State. The Commission also circulated a questionnaire to IAPI, the representative body for the marketing and communications sector in the State.

- 4.23 In order to ascertain the views of the parties’ advertising customers on the closeness of competition between *The Irish Times* and the *Irish Examiner*, the following question was posed by the Commission in the questionnaire sent to advertising customers and IAPI during the Phase 1 investigation:

“Do you consider The Irish Times and the Irish Examiner to be close competitors in the sale of newspaper advertising in the State?”

- 4.24 The vast majority of advertising customers who responded to the Commission’s questionnaire expressed the view that *The Irish Times* and the *Irish Examiner* are not close competitors in the sale of newspaper advertising in the State because they target readers located in different parts of the State. This view was also expressed by IAPI, which responded to the Commission’s questionnaire as follows:

“While they are close in some respects (such as both titles catering editorially to a national audience) they cater to different audiences, Irish Times having a larger focus in Dublin and the Examiner almost exclusively catering to a Munster audience.”

Views of Competitors

- 4.25 In order to ascertain the views of competing daily national newspaper publishers in the State on the closeness of competition between *The Irish Times* and the *Irish Examiner*, the following question was posed by the Commission in a questionnaire sent to the parties’ competitors during the Phase 1 investigation:

“For each national newspaper that you publish in the State, please list the newspaper(s) that you consider most similar with respect to readership demographic and content?”

- 4.26 [...]

Analysis of Newspaper Circulation and Digital Subscription Data



- 4.27 Monthly newspaper circulation data provided to the Commission by ITD and LMI covering the period from January 2013 to December 2017 indicates that *The Irish Times* and the *Irish Examiner* are strong in different parts of the State.
- 4.28 This is illustrated in Table 3 below which details the regional breakdown of the average monthly circulation of *The Irish Times* and the *Irish Examiner* in the State in 2017.

Table 3: Daily National Newspaper Circulation in the State, Regional Breakdown, 2017

Newspaper	Co. Dublin	Rest of Leinster	Munster
<i>The Irish Times</i>	[...]%	[...]%	[...]%
<i>Irish Examiner</i>	[...]%	[...]%	[...]%

Source: The Commission, based on information provided by ITD and LMI.

- 4.29 As can be seen in Table 3, [...]% of *The Irish Times's* average monthly circulation in the State in 2017 was accounted for by Co. Dublin with the rest of Leinster (i.e., excluding Co. Dublin) accounting for [...]. Thus, [...]% of *The Irish Times's* average monthly circulation in the State in 2017 was accounted for by Leinster. In contrast, Munster accounted for only [...]% of *The Irish Times's* total average monthly circulation in the State in 2017. Connacht and Ulster accounted for [...] and [...], respectively, of *The Irish Times's* average monthly circulation in the State in 2017.
- 4.30 In contrast to *The Irish Times*, [...]% of the *Irish Examiner's* average monthly circulation in the State in 2017 was accounted for by Co. Cork with the rest of Munster (i.e., excluding Co. Cork) accounting for [...]. Thus, [...]% of the *Irish Examiner's* average monthly circulation in the State in 2017 was accounted for by Munster. Only [...]% of the *Irish Examiner's* total average monthly circulation in the State in 2017 was accounted for by Leinster.
- 4.31 The above circulation figures clearly illustrate that while the readership of *The Irish Times* is predominantly based in Leinster, the vast majority of the *Irish Examiner's* readers are located in Munster.
- 4.32 This regional difference in the respective readerships of *The Irish Times* and the *Irish Examiner* can also be seen from an examination of the location of digital subscribers to both newspapers' websites (*irishtimes.com* and *irishexaminer.com*) in the State in 2017 (see Table 4 below).

Table 4: Digital Subscribers in the State, Regional Breakdown, 2017

Newspaper	Co. Dublin	Rest of Leinster	Munster
<i>irishtimes.com</i>	[...]%	[...]%	[...]%
<i>irishexaminer.com</i>	[...]%	[...]%	[...]%

Source: The Commission, based on information provided by ITD and LMI.



- 4.33 As can be seen in Table 4 above, of the total number of digital subscribers to *irishtimes.com* in 2017 located in the State,²⁶ [...] % were based in Leinster.²⁷ Only [...] % of digital subscribers to *irishtimes.com* located in the State were based in Munster. In contrast, Munster accounted for [...] % of the total number of digital subscribers to *irishexaminer.com* in 2017 located in the State.²⁸ Only [...] % of digital subscribers to *irishexaminer.com* were located in Leinster, the vast majority of which were located in Co. Dublin.
- 4.34 Thus, it is clear to the Commission from an examination of the newspaper circulation and digital subscription data for *The Irish Times* and the *Irish Examiner* that while the former's readership is predominantly based in Leinster (in particular, Co. Dublin), the latter's readership is largely confined to Munster.

Commission's View of Closeness of Competition

- 4.35 The Commission considers that the evidence described above indicates that *The Irish Times* and the *Irish Examiner* are not each other's closest competitors in the market for the publication and sale of daily national newspapers in the State. While it is the case that both *The Irish Times* and the *Irish Examiner* are daily national newspapers with similar content and readership demographics, the former's readership is predominantly based in Leinster (in particular, Co. Dublin) while the latter's readership is largely confined to Munster (primarily, Co. Cork).
- 4.36 The Commission considers that the *Irish Independent*, a daily national newspaper published by INM, is the closest competitor to *The Irish Times* in the market for the publication and sale of daily national newspapers in the State. As can be seen in Table 1 above, the *Irish Independent* is the biggest daily national newspaper in the State. Internal documentation provided to the Commission by ITD suggests that ITD perceives the *Irish Independent* to be a close competitor to *The Irish Times*. Furthermore, as noted above, [...].

Growing Constraint from Online News Publishers

- 4.37 Publishers of daily national newspapers in the State face a growing competitive constraint from a wide range of free online news content (for example, the websites of large broadcasters such as RTÉ, BBC, The Guardian, etc.). This is evidenced in the significant decline (as detailed in section 2 of this determination) in the circulation of daily national newspapers in the State over the last ten years. Following implementation of the Proposed Transaction, ITD will continue, to some extent, to face competitive constraint from publishers of free online news content, in addition to other daily national newspaper publishers in the State.

Conclusion on Unilateral Effects

- 4.38 The Commission has found no evidence to suggest that *The Irish Times* and the *Irish Examiner* are each other's closest competitors in the market for the publication and

²⁶ In 2017, 75% of the total number of digital subscribers to *irishtimes.com* were located in the State with the remainder located outside the State (predominantly in the United Kingdom, United States and Europe).

²⁷ 50% of digital subscribers to *irishtimes.com* located in the State were based in Co. Dublin.

²⁸ The vast majority of digital subscribers to *irishexaminer.com* in Munster are located in Co. Cork.



sale of daily national newspapers in the State. Following implementation of the Proposed Transaction, ITD will continue to face competition from other daily national newspaper publishers in the State, most notably INM who publish the *Irish Independent*, as well as from publishers of free online news content.

- 4.39 For the reasons set out above and considering all of the evidence described above, the Commission considers that ITD would not have the ability and incentive following implementation of the Proposed Transaction to unilaterally increase the price of *The Irish Times* and/or the *Irish Examiner* or to otherwise harm competition in the market for the publication and sale of daily national newspapers in the State.²⁹

Coordinated Effects

- 4.40 Coordinated effects occur where a proposed transaction changes the nature of competition in the relevant market by making it more likely that the merged entity and some or all of its competitors will coordinate their behaviour by, for example, raising prices and/or decreasing output. Such coordination refers to actions that are profitable only as a result of each firm accommodating the reactions of others. Thus, the key question is whether a proposed transaction would materially increase the likelihood that firms in the market will successfully coordinate their behaviour or would strengthen existing coordination between firms in the market.

No Evidence of Coordinated behaviour prior to the Proposed Transaction

- 4.41 The Commission has found no evidence of coordinated behaviour between competitors in the market for the publication and sale of daily national newspapers in the State prior to implementation of the Proposed Transaction. The Commission contacted a wide range of third parties during its investigation and none raised any concern about existing coordinated behaviour between competitors in the relevant market.

Conditions and Evidence Considered for Coordinated Behaviour

- 4.42 In assessing the potential for a proposed transaction to result in coordinated effects, the Commission will assess whether the conditions and incentives that are generally necessary for successful coordination between competitors are present or likely to arise, which includes assessing:
- a) the ability to identify common terms of coordination; and
 - b) the ability to detect deviations from the terms of coordination, and the ability to punish deviations that would undermine the coordinated interaction.³⁰
- 4.43 In this instance, the Commission assessed whether the Proposed Transaction would increase the possibility of coordination between competitors in the relevant market

²⁹ [...].

³⁰ See paragraphs 4.25-4.31 of the Commission's "Guidelines for Merger Analysis" for a detailed discussion of the conditions and incentives conducive to coordinated behaviour.



and then examined whether it would increase the sustainability of any such coordination.

The Possibility of Reaching Common Terms of Coordination

- 4.44 In order to coordinate behaviour, firms need to achieve an understanding as to how to do so. This need not involve explicit agreements among competitors, or any communication between them, nor need it involve all firms active in the relevant market or perfect coordination between firms. Coordinated behaviour can take many forms. In some markets, firms may coordinate their behaviour on prices in order to keep them above the competitive level. In other markets, coordination may aim at limiting production or the amount of new capacity brought to the market. Firms may also coordinate their behaviour by dividing the market between them, for instance by geographic area or other customer characteristics.
- 4.45 In this instance, newspaper publishers in the State could, in theory, coordinate their behaviour by agreeing on a cover price for daily national newspapers.
- 4.46 In the following paragraphs, the Commission sets out its analysis as to whether the relevant market presents characteristics such that it would be possible for competing publishers of daily national newspapers in the State to reach terms of coordination and whether any such coordination could be maintained following implementation of the Proposed Transaction.

Symmetry

- 4.47 Firms may find it easier to reach a common understanding on the terms of coordination if they are relatively symmetric, especially in terms of market shares.
- 4.48 The Proposed Transaction would not lead to an increase in the level of symmetry between the market shares of publishers of daily national newspapers in the State. As can be seen in Table 2 above, market shares by newspaper publisher will remain relatively asymmetric in the market for the publication and sale of daily national newspapers in the State following implementation of the Proposed Transaction. Following implementation of the Proposed Transaction, ITD's market share of approximately 23.8% would make it the second biggest daily national newspaper publisher in the State. INM would remain the biggest daily national newspaper publisher in the State with a market share of approximately 30.1%.

Transparency

- 4.49 The current cover prices charged by daily national newspaper publishers in the State are very transparent and the Commission considers that this would not change following completion of the Proposed Transaction.

Product Differentiation

- 4.50 Reaching terms of coordination is easier in the case of homogenous products than in a differentiated product market. Daily national newspapers are differentiated products with their own particular content and readership demographic which will be



attractive to different types of advertising customers. The Commission considers that this would continue to be the case following implementation of the Proposed Transaction.

Market Stability

- 4.51 Volatile market conditions can make reaching terms of coordination more difficult. As noted above, daily national newspapers published in the State have experienced a significant decline in circulation and advertising revenue over the past decade. This decline is primarily as a result of the availability of free news content online. The Commission considers that this volatility in the demand for daily national newspapers in the State is likely to make coordination by newspaper publishers on cover prices more difficult.

Conclusion on the Possibility of Reaching Common Terms of Coordination

- 4.52 In light of the above the Commission has concluded that coordination by newspaper publishers on the cover prices for daily national newspapers following implementation of the Proposed Transaction does not appear to be feasible due to the lack of symmetry in market shares between market participants and the extremely volatile nature of demand for daily national newspapers in the State.

Sustainability of coordination

- 4.53 The Commission considers that Proposed Transaction will not in itself result in an increase in the sustainability of coordination between competitors in the relevant market since the reaction of current and future competitors and customers is likely to jeopardise any attempt by newspaper publishers to coordinate on the cover prices for daily national newspapers in the State. As noted above, publishers of daily national newspapers in the State face a growing competitive constraint from a wide range of free online news content, which is likely to prevent or limit coordinated behaviour by publishers of daily national newspapers in the State

Conclusion on Coordinated Effects

- 4.54 For the reasons set out above and considering all of the evidence available to it, the Commission considers that the Proposed Transaction will not make it more likely that ITD and its competitors will engage in coordinated behaviour in the market for the publication and sale of daily national newspapers in the State with the effect of substantially lessening competition in the relevant market.

(ii) The Sale of Advertising in Daily National Newspapers in the State

- 4.55 The Commission conducted a detailed competitive assessment of the likely competitive impact of the Proposed Transaction in the market for the sale of advertising in daily national newspapers in the State.

Competitive Effects Analysis



- 4.56 In this section, the Commission sets out its analysis of the likely competitive effects of the Proposed Transaction in the market for the sale of advertising in daily national newspapers in the State.

Views of the Notifying Parties

- 4.57 In the notification submitted to the Commission dated 14 December 2017, the parties state the following:

“The parties will continue to face strong competition to attract newspaper advertising from INM, publisher of the Irish Independent, the Irish Daily Star and The Herald, Trinity Mirror (publisher of The Irish Daily Mirror), News Corp (publisher of The Times – Ireland Edition and The Irish Sun) and DMG Media (publisher of the Irish Daily Mail.)”

“The parties' combined market share of [...] % will not give the combined entity the power to raise prices particularly given that discounting from rate cards is a key characteristic of the sale of newspaper advertising. Moreover, advertising on traditional media such as newspapers is declining for two main reasons: the drop in circulation figures allied to the growth of digital advertising (if not for newspaper publishers).”

“Given the lack of homogeneity of firms, e.g., in terms of market shares, allied to the challenging conditions faced by all newspaper publishers, the Proposed Transaction does not give rise to co-ordinated effects concerns in the sale of advertising in Irish newspapers.”

Views of the Commission

- 4.58 The Commission focused on two theories of harm as part of its assessment of the likely competitive impact of the Proposed Transaction in the market for the sale of advertising in daily national newspapers in the State, namely: unilateral effects and coordinated effects.

Unilateral Effects

- 4.59 In considering the likelihood of the occurrence of unilateral effects following implementation of the Proposed Transaction, the Commission assessed a number of factors including the closeness of competition between *The Irish Times* and the *Irish Examiner*.
- 4.60 For the reasons set out below, the Commission considers that the Proposed Transaction would not confer on ITD the ability or incentive to unilaterally increase the price of newspaper advertising in *The Irish Times* and/or the *Irish Examiner* or to otherwise harm competition in the market for the sale of advertising in daily national newspapers in the State.



Closeness of Competition

- 4.61 As noted above, a merger may give rise to unilateral effects if it eliminates or weakens competition between sellers of differentiated products who previously competed on the basis of price and depending on the closeness of the merging firms' products.
- 4.62 While *The Irish Times* and the *Irish Examiner* are clearly competitors in the market for the sale of advertising in daily national newspapers in the State, the Commission has found no evidence to suggest that the newspapers are each other's closest competitors. This view is based on the following evidence:

Analysis of Newspaper Circulation and Digital Subscription Data

- 4.63 Monthly newspaper circulation data provided to the Commission by ITD and LMI covering the period from January 2013 to December 2017 indicates that readers of *The Irish Times* and the *Irish Examiner* are predominantly located in different parts of the State. As detailed in Table 3 and Table 4 above, circulation and digital subscription data clearly illustrate that while the readership of *The Irish Times* is predominantly based in Leinster, the vast majority of the *Irish Examiner's* readers are located in Munster.

Internal Documentation

- 4.64 As detailed in paragraphs 4.18 and 4.19 above, internal documentation provided to the Commission by ITD suggests that ITD perceives *The Irish Times* and the *Irish Examiner* to have readerships located in different parts of the State. Internal documentation provided to the Commission by ITD also suggests that ITD perceives the *Irish Independent* to be a close competitor to *The Irish Times*.

Views of Advertising Customers and the IAPI

- 4.65 As detailed in paragraph 4.24 above, IAPI and the vast majority of advertising customers who responded to the Commission's questionnaire expressed the view that *The Irish Times* and the *Irish Examiner* are not close competitors in the sale of advertising in daily national newspapers in the State.
- 4.66 In order to ascertain the views of advertising agencies and IAPI on the likely competitive impact of the Proposed Transaction in the market for the sale of advertising in daily national newspapers in the State, the following question was also posed by the Commission in the questionnaire sent to advertising agencies and IAPI during the Phase 1 investigation:

“Do you consider that you have sufficient buying power to prevent The Irish Times Designated Activity Company from raising the price of newspaper advertising or restricting advertising?”

- 4.67 All advertising agencies that responded to the Commission's questionnaire expressed the view that they would have sufficient buying power following implementation of



the Proposed Transaction to prevent ITD from raising the price of newspaper advertising or restricting advertising in the State. The most commonly cited reason was the large number of alternative advertising options available to advertising agencies in the State. This view was also expressed by IAPI, which responded to the Commission's questionnaire as follows::

"Yes, however it is not just about buying power, it is about the availability of alternative media buying options. Ireland remains a very competitive media market."

Views of Competitors

4.68 [...]]

Commission's View of Closeness of Competition

4.69 The Commission considers that the evidence described above indicates that *The Irish Times* and the *Irish Examiner* are not each other's closest competitors in the market for the sale of advertising in daily national newspapers in the State. While it is the case that both *The Irish Times* and the *Irish Examiner* are daily national newspapers with similar content and readership demographics, the former's readership is predominantly based in Leinster (in particular, Co. Dublin) while the latter's readership is largely confined to Munster (primarily, Co. Cork).

4.70 The Commission considers that the *Irish Independent* is the closest competitor to *The Irish Times* in the market for the sale of advertising in daily national newspapers in the State. As can be seen in Table 1 above, the *Irish Independent* is the biggest daily national newspaper in the State. As noted above, [...].

4.71 The Commission considers that other daily national newspaper publishers in the State, most notably INM who publishes the *Irish Independent*, will continue to exert a competitive constraint on *The Irish Times* and the *Irish Examiner* following implementation of the Proposed Transaction such that ITD will not have the ability to unilaterally increase the price of advertising in its daily national newspapers or to otherwise harm competition in the market for the sale of advertising in daily national newspapers in the State.

Growing Constraint from Online News Publishers

4.72 As noted above, following implementation of the Proposed Transaction, ITD will continue, to some extent, to face competitive constraint from publishers of free online news content, in addition to other daily national newspaper publishers in the State.

Conclusion on Unilateral Effects

4.73 The Commission found no evidence to suggest that *The Irish Times* and the *Irish Examiner* are each other's closest competitors in the market for the sale of advertising in daily national newspapers in the State. Following implementation of the Proposed Transaction, ITD will face competition from other daily national newspaper publishers



in the State, most notably INM who publishes the *Irish Independent*, as well as from publishers of free online news content.

- 4.74 For the reasons set out above and considering all of the evidence described above, the Commission considers that ITD would not have the ability and incentive following implementation of the Proposed Transaction to unilaterally increase the price of advertising in *The Irish Times* and/or the *Irish Examiner* or to otherwise harm competition in the market for the sale of advertising in daily national newspapers in the State.

Coordinated Effects

- 4.75 The Commission also assessed whether the Proposed Transaction would materially increase the likelihood that firms would successfully coordinate their behaviour or strengthen existing coordination in the market for the sale of advertising in daily national newspapers in the State
- 4.76 For the reasons set out below, the Commission considers that the Proposed Transaction will not make it more likely that ITD and its competitors will engage in coordinated behaviour in the market for the sale of advertising in daily national newspapers in the State.
- 4.77 First, the Commission found no evidence of coordinated behaviour between competitors in the market for the sale of advertising in daily national newspapers in the State prior to the implementation of the Proposed Transaction. The Commission contacted a wide range of third parties during its investigation and none raised any concern about existing coordinated behaviour between competitors in the relevant market.
- 4.78 Second, the absence of transparency concerning the price of advertising in daily national newspapers in the State means that it would be difficult for newspaper publishers to coordinate on the price of newspaper advertising following implementation of the Proposed Transaction.
- 4.79 Newspaper publishers publish a “rate card” on their website detailing the price of advertising in each of the daily national newspapers that they publish in the State.³¹ The rate card, however, is only the starting point for price negotiations since the published newspaper advertising rates are not necessarily the actual rates ultimately paid by advertising customers. The newspaper publisher attempts to charge a price as close as possible to the rate card while the advertising customer seeks to negotiate the maximum discount. Since discounts are widespread, rate card information will only provide a superficial indication of the price of advertising in a particular newspaper.
- 4.80 The Commission’s survey of newspaper publishers currently active in the State which compete with ITD and LMI confirmed that all newspaper publishers offer discounts off their published rate cards. Two newspaper publishers informed the Commission that discounts to the published rate cards can vary between [...] % and primarily depend on

³¹ For example, the advertising rate card of *The Irish Times* can be accessed at <https://www.irishtimes.com/about-us/advertise/rate-card>



the customer's level of advertising spend. Discounts off the published rate card are negotiated on a bilateral basis between the newspaper publisher and advertising customer and are not publicly known. This process will not change following implementation of the Proposed Transaction.

- 4.81 Third, daily national newspapers published in the State have experienced a significant decline in newspaper advertising revenue over the past decade.³² This decline is partly as a result of the availability of free news content online. This decline in daily national newspaper advertising revenue in the State makes coordination by newspaper publishers on the price of advertising more difficult. This would appear to reduce the incentive for daily national newspaper publishers to coordinate on the price of newspaper advertising in the State.
- 4.82 Fourth, the Commission considers that the Proposed Transaction will not result in an increase in the sustainability of coordination between competitor in the relevant market since the reaction of current and future competitors and customers is likely to jeopardise any attempt by newspaper publishers to coordinate on the price for daily national newspaper advertising in the State. As noted above, publishers of daily national newspapers in the State face a growing competitive constraint from a wide range of free online news content, which is likely to prevent or limit coordinated behaviour by publishers of daily national newspapers in the State.

Conclusion on Coordinated Effects

- 4.83 For the reasons set out above and considering of the evidence available to it, the Commission considers that the Proposed Transaction will not make it more likely that ITD and its competitors will engage in coordinated behaviour in the market for the sale of advertising in daily national newspapers in the State.

(iii) The Sale of Online Advertising in the State

- 4.84 The Commission conducted an assessment of the likely competitive impact of the Proposed Transaction in the market for the sale of online advertising in the State.

Views of the Notifying Parties

- 4.85 In the notification submitted to the Commission dated 14 December 2017, the parties state the following:

“The various websites of both parties will continue to face strong competition for the sale of digital advertising from the websites of other Irish newspapers, from Irish news websites such as the journal.ie, from international news and other websites plus various social media platforms not to mention Google. Post-completion of the Proposed Transaction, the enlarged ITD will have [...] % of digital

³² For example, newspaper advertising revenue in *The Irish Times* declined by [...] % over the period 1 January 2013 to 31 December 2017 while newspaper advertising revenue in the *Irish Examiner* declined by [...] % over the same period.



advertising spend targeted at Irish consumers. By way of contrast, Google has over 45% of the same market.”

“In light of the vast array of competing websites (some of which are extremely sophisticated and well-resourced) coupled with the lack of transparency on pricing, the Proposed Transaction does not give rise to co-ordinated effects concerns in the sale of digital advertising.”

Views of the Commission

- 4.86 For the reasons set out below, the Commission considers that the Proposed Transaction raises no competition concerns in the market for the sale of online advertising in the State.
- 4.87 First, both ITD and LMI currently have a small share of the market for the sale of online advertising in the State. ITD generated turnover of approximately €[...] from the sale of online advertising in the State in 2017. This accounted for [...] % of the total level of online advertising spend (€491 million³³) in the State in 2017.
- 4.88 LMI generated turnover of approximately €[...] from the sale of online advertising in the State in 2017. This accounted for [...] % of the total level of online advertising spend in the State in 2017.
- 4.89 Thus, following completion of the Proposed Transaction, ITD will account for less than [...] % of the total level of online advertising in the State.
- 4.90 Second, following implementation of the Proposed Transaction, ITD will face competition from a number of alternative suppliers of online advertising space in the State, including Google, Facebook, Distilled Media Group Limited, INM and RTÉ. The Commission considers that these alternative suppliers of online advertising space will continue to exert a competitive constraint on ITD following implementation of the Proposed Transaction.

Vertical Relationship

- 4.91 There is an existing vertical relationship between ITD and Sappho in the State since ITD currently prints all of Sappho's newspaper publications.
- 4.92 For the reasons set out below, the Commission considers that this vertical relationship between ITD and Sappho raises no vertical foreclosure concerns in the State. ITD is currently contracted to print each of Sappho's newspaper publications until 2020. Therefore, there will be no change in the existing vertical relationship between ITD and Sappho following implementation of the Proposed Transaction.
- 4.93 Furthermore, ITD will not have the ability, following implementation of the Proposed Transaction, to increase the price that it charges to third party contract printing customers given that ITD will continue to face competition from other suppliers of

³³ This figure is taken from a report published by IAB Ireland and PwC entitled “Online Adspend Study for FY 2017” which can be accessed at <https://iabireland.ie/iab-pwc-online-adspend-fy-2017-infographic/>.



contract printing services in the State, including Celtic Media Group Limited and Datascope Limited.



5. CONCLUSION

- 5.1 In light of its analysis as set out in this determination, the Commission has determined that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.



6. ANCILLARY RESTRAINTS

- 6.1 The SPA contains a number of restrictive obligations on LMI. These include non-compete and non-solicitation clauses. None of these restrictive obligations exceeds the maximum duration acceptable to the Commission.³⁴ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

³⁴ 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)



7. DETERMINATION

The Competition and Consumer Protection Commission, in accordance with section 22(3)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition whereby The Irish Times Designated Activity Company, through its wholly-owned subsidiary Palariva Limited, would acquire sole control of Sappho Limited from Landmark Media Investments 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)³⁵ of the Competition Act 2002, as amended.

For the Competition and Consumer Protection Commission

Isolde Goggin
Chairperson
Competition and Consumer Protection Commission

³⁵ Section 28C(1) of the Competition Act 2002, as inserted by section 74 of the Competition and Consumer Protection Act 2014.