



DETERMINATION OF MERGER NOTIFICATION M/18/046 – LIBERTY GLOBAL/PBN (CASEY CABLE)

Section 21 of the Competition Act 2002

Proposed acquisition by Liberty Global plc, through its wholly owned subsidiary Virgin Media Limited, of sole control of P.B.N. Holdings Limited

Dated 29 June 2018

Introduction

1. On 30 May 2018, 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 a notification of a proposed acquisition whereby Liberty Global plc (“Liberty Global”), through its wholly owned subsidiary Virgin Media Limited (“Virgin Media”), would acquire sole control of P.B.N. Holdings Limited (“PBN”) and its wholly-owned subsidiary Casey Cablevision Limited (“Casey Cable”) (the “Proposed Transaction”).
2. Given that both Liberty Global and Casey Cable 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.

The Proposed Transaction

3. The Proposed Transaction is to be implemented pursuant to a Sale and Purchase Agreement (“the SPA”) dated 24 May 2018 between Virgin Media and Patrick Casey, Noelle Casey and William Casey¹ (collectively the “Sellers”). Pursuant to the SPA, Virgin Media would acquire the full legal and beneficial ownership of the entire issued share capital of PBN.

¹ These individuals are collectively the legal and beneficial owners of the entire issued share capital of PBN.



The Undertakings Involved

The Acquirer – Liberty Global

4. Liberty Global is a public limited company listed on the NASDAQ Global Select Market. Liberty Global owns and operates cable networks offering television (“TV”) services, broadband Internet, fixed-line voice telephony and mobile telecommunications services in several European countries².
5. Within the State, Liberty Global, through its wholly owned subsidiary, Virgin Media, owns and operates a cable network which passes through approximately 893,000 homes located predominantly in urban areas³ in the State.
6. At the retail level, Liberty Global offers TV services⁴, broadband Internet, business connectivity⁵, fixed-line voice telephony and mobile telecommunications services⁶. In addition, Liberty Global owns and operates three free-to-air channels (“FTA”)⁷, TV3, 3e and be3 and a TV production studio in cooperation with Sony International. Liberty Global is also active in supplying TV programme content through its joint venture with Discovery Communications, Inc. in All3Media Holdings Limited (“All3Media”)⁸.
7. At the wholesale level, Liberty Global provides the following services:
 - Call termination on both fixed and mobile networks;
 - Leased line services;
 - Internet connectivity services;
 - Domestic call transit services;

² Austria, Belgium, the Czech Republic, Germany, Hungary, Ireland, Luxembourg, Poland, Romania, Slovakia, Switzerland and the United Kingdom.

³ The parties informed the Commission that 855,300 of these homes are two-way enabled i.e., they are capable of receiving TV, Internet and fixed telephony services. This information is also available at: <https://www.libertyglobal.com/investors/investor-relations/>.

⁴ Pay-TV services and a catch-up Video on Demand (“VoD”) services via its 3Player.

⁵ The parties state in the notification that this potential market consists of the provision of fixed broadband Internet access services to large enterprises (defined as business customers with more than 250 full time employees) and public sector customers, Virtual Private Networks and retail leased lines.

⁶ The parties informed the Commission that Virgin Media provides mobile telecommunications service pursuant to a Mobile Virtual Network Operator Agreement with Hutchison Whampoa which operates mobile network in the State via its wholly-owned subsidiary Three Ireland Limited.

⁷ TV3 channel is broadcast within the State under license from the Broadcasting Authority of Ireland (the “BAI”).

⁸ The parties informed the Commission that neither All3Media nor any of its subsidiaries produced TV programme content in Ireland in 2017. All3Media was involved in supplying TV programme content within the State in the past (albeit to a limited extent) when it co-produced series 1 of a TV show Red Rock.



- Hosting and terminating calls to non-geographic numbers;
 - Licensing of broadcasting rights for TV content;
 - Supply of TV channels; and
 - TV content production.
8. For the financial year ending 31 December 2017, Liberty Global's worldwide turnover was approximately €13.3 billion, of which approximately €416.7 million was generated in the State.

The Target – PBN

9. PBN, a privately-owned company registered in the State, through its wholly-owned subsidiary Casey Cable, owns and operates a cable network which passes through approximately 6,200 homes in Dungarvan, County Waterford⁹ and Clonmel, County Tipperary.
10. At the retail level, Casey Cable offers pay-TV services, broadband Internet, fixed-line voice telephony services and business connectivity services.
11. At the wholesale level, Casey Cable offers call termination services on its cable network.
12. For the financial year ending 31 December 2017, Casey Cable's worldwide turnover (all of which was generated in the State) was approximately €[...].

Rationale for the Proposed Acquisition

13. The notification states:

“The Proposed Transaction represents an attractive business opportunity for Liberty Global. Through the acquisition of Casey Cable, Virgin Media will be able to extend its cable footprint to parts of Dungarvan in County Waterford, Ireland. Virgin Media and Liberty Global have the technical expertise and the necessary financial means

⁹ The parties informed the Commission that Casey Cable's networks passes through the following towns in the Dungarvan urban area: Dungarvan, Aberryside, Ballinroad, Ballinacourty, Clogherane, Ballinamuck, Burgery, Monang, Knockdaltermore, Lachenfane and Tourmore.



to make substantial improvements to Casey Cable's network architecture, further to which, residential and business customers on Casey Cable network will be able to avail of Virgin Media's advanced product offerings of TV, high speed broadband and fixed and mobile telephony services."

Third Party Submissions

14. No submission was received.
15. The Commission contacted the Commission for Communications Regulation ("ComReg") and the Department of Communications, Climate Action & Environment ("DCCAE") to obtain their views on the Proposed Transaction. ComReg informed the Commission that Virgin Media has no network presence in the geographic area covered by Casey Cable's network. ComReg had no additional observations on the Proposed Transaction.

Industry Background

The Electronic Communications Services Sector

16. There are currently several providers of retail electronic communications services ("ECS") in the State. These providers differ in terms of the services they supply, their relative size, the technology/service platforms they use to supply services and the geographic coverage of their networks/services. For the purposes of the Commission's analysis in this Determination, providers of ECS can be categorised into two categories:
 - **Independent providers:** these providers offer retail and/or wholesale ECS predominantly using their own network and associated infrastructure and hence, are not reliant on the use of wholesale inputs supplied by providers of wholesale ECS¹⁰. Examples of such providers currently include eir, Virgin Media and Casey Cable.

¹⁰ With the exception of various wholesale interconnectivity services such as wholesale call termination services.

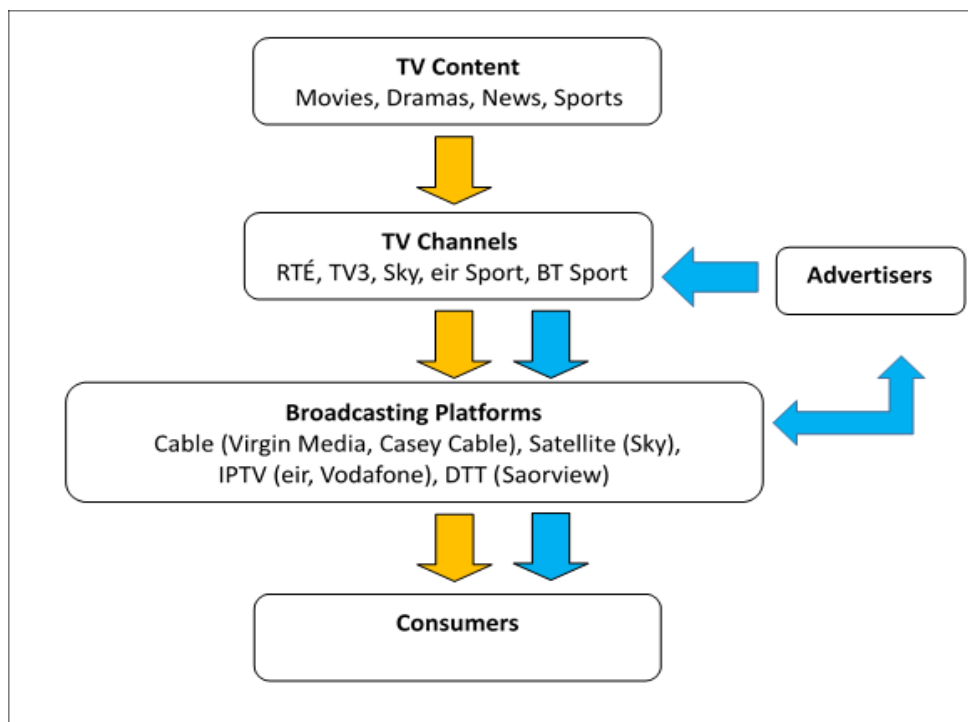


- **Providers reliant on wholesale inputs of other ECS providers:** these providers purchase various wholesale inputs from providers of wholesale ECS and use these inputs to provide ECS at the retail level. These providers typically have limited network infrastructure of their own and depend on the services provided by wholesale ECS providers. Examples of such providers include Vodafone and Sky.

The TV Broadcasting Sector

17. The TV broadcasting sector can be described as a supply chain (see Figure 1) involving TV content, TV channels, broadcasting platforms and TV viewers as previously described in the Commission's determinations in M/15/039 - *Liberty Global/TV3*¹¹ and M/16/038 - *Liberty Global/UTV Ireland*¹².

Figure 1: The structure of TV Broadcasting Sector in the State



Source: The Commission's analysis.

¹¹ See M/15/039 - *Liberty Global/TV3* which can be accessed at: <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m15039-liberty-global-tv3/>.

¹² See M/16/038 - *Liberty Global/UTV Ireland* which can be accessed at: <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m16038-liberty-global-utv-ireland/>.



18. TV content refers to (i) the production and recording of programmes (e.g., drama, comedy and documentaries) for subsequent broadcast and viewing and (ii) the production of live programmes (e.g., news, cultural and sporting events).
19. TV channels acquire the rights to TV content and arrange this content into a schedule of programmes to be shown at particular times. This form of television broadcasting is called “linear” TV. By way of contrast non-linear TV services (which include playback services available on the Electronic Programme Guide, Pay per View and VoD services) are available to viewers at times other than scheduled linear services on the broadcasting platform.
20. TV broadcasting platforms provide the infrastructure whereby TV content is broadcast to viewers.
21. TV channels offer TV advertising space to enable individuals, firms and organisations (including broadcasting platforms) to promote products or services on TV for a fee.
22. The TV broadcasting sector is changing with the implementation of new technologies and the evolution of the Internet. More efficient and powerful digital means of sending TV content to viewers, for example, broadcasting using Internet protocol and over mobile devices, is replacing the traditional transmission technology. Furthermore, VoD access to TV programmes is also increasing¹³.
23. The landscape of the television broadcasting sector has also changed in light of the increasing numbers of vertically integrated TV channels and distributors with both Liberty Global and eir acquiring their own TV channels in recent years.

Competitive Assessment

Horizontal overlap between the activities of the parties

24. The parties informed the Commission that there are five horizontal overlaps in the State between the parties’ business activities: (i) the retail provision of fixed broadband

¹³ For example see <https://www.irishtimes.com/business/media-and-marketing/netflix-estimated-to-be-watched-in-over-500-000-irish-homes-1.3439872>.



Internet access services; (ii) the retail provision of fixed-line voice telephony services; (iii) the retail provision of business connectivity services; (iv) the retail provision of pay-TV services; and (v) the wholesale acquisition of TV channels.

25. While the parties' business activities overlap in terms of the type of retail service provided, the parties informed the Commission that there is no geographic network overlap between the parties' networks. As set out in paragraph 9 above, Casey Cable's network passes through approximately 6,200 homes in Dungarvan, County Waterford and Clonmel, County Tipperary. Virgin Media does not provide retail ECS in Dungarvan. While Virgin Media provides retail ECS in Clonmel, there is no overlap between the parties in terms of geographic coverage in Clonmel. The parties indicated that their networks pass within 6 metres of each other. No consumer in Clonmel has the option of switching between Virgin Media and Casey Cable¹⁴. Therefore, there is no competitive, geographic overlap between the parties' activities.

The provision of retail services

26. For completeness, the Commission also assessed the Proposed Transaction's competitive impact in the broader potential geographic market, namely the State. In this context "retail services" includes the retail provision of fixed broadband Internet access services; fixed-line voice telephony services, business connectivity services and TV services.
27. In this regard, the parties informed the Commission that as of 31 December 2017, Casey Cable had [...] fixed broadband Internet access service subscribers, [...] fixed-line voice telephony service subscribers, [...] business connectivity services customers and [...] pay-TV service subscribers, which represents less than 1% of the market share in any of the above retail services markets.
28. Given the very small scale of Casey Cable's business activities, it is not necessary for the Commission to define precisely the relevant product markets as the Proposed Transaction would not have any material impact regardless of how the markets are defined. Nevertheless, for the purposes of reviewing the Proposed Transaction, the

¹⁴ The parties informed the Commission that their networks pass within 6 metres of each other.



Commission has examined the possible competitive effects of the Proposed Transaction within the State in relation to: (i) the retail provision of fixed broadband Internet access services; (ii) the retail provision of fixed-line voice telephony services; (iii) the retail provision of business connectivity services; (iv) the retail provision of pay-TV services¹⁵.

29. Table 1 sets out the changes in market shares in each retail market following the implementation of the Proposed Transaction. It indicates that implementation of the Proposed Transaction will lead to a minimal increase in Liberty Global's market share in any of the retail markets in the State where the parties' business activities overlap.

Table 1: Market shares of retail ECS providers as of Q4 2017 in the State

Service	Operator	Market share pre-transaction	Market share post-transaction
The retail provision of fixed broadband Internet access services (Market shares are based on ComReg's estimate of 1,401,356 subscriptions ¹⁶)	eir	31.4%	31.4%
	Liberty Global	26.8%	26.9%
	Vodafone	19.0%	19.0%
	Sky	13.1%	13.1%
	Casey Cable	0.1%	-
	Other	9.6%	9.6%
The retail provision of fixed-line voice telephony services (Market shares are based on ComReg's estimate of 1,468,548 subscriptions ¹⁷)	eir	38.3%	38.3%
	Liberty Global	24.3%	24.3%
	Vodafone	14.4%	14.4%
	Sky	12.8%	12.8%
	Casey Cable	0.02%	-
	Other	10.2%	10.2%

¹⁵ The Commission has previously assessed the competitive impact of transactions in these markets in M/09/015 – Vodafone Ireland/ BT Ireland which can be accessed at: <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m09015-vodafone-ireland-bt-ireland/> and M/10/009 – UPC Communications/Broadworks which can be accessed at: <https://www.cpc.ie/business/mergers-acquisitions/merger-notifications/m10009-upc-broadworks/>.

¹⁶ Source: ComReg's Data Portal which can be accessed at: <https://www.comreg.ie/industry/electronic-communications/data-portal/>.

¹⁷ Ibid



Service	Operator	Market share pre-transaction	Market share post-transaction
The retail provision of business connectivity services (Market shares are based on annual total market revenues of €[...] in 2017 ¹⁸)	Liberty Global	[0-10]%	[0-10]%
	Casey Cable	[0-10]%	-
	Other	[90-100]%	[90-100]%
The retail provision of pay-TV services (Market shares are based on pay-TV subscriptions) ¹⁹	Sky	[60-70]%	[60-70]%
	Liberty Global	[20-30]%	[20-30]%
	eir	[0-10]%	[0-10]%
	Casey Cable	[0-10]%	-
	Other	[0-10]%	[0-10]%

Source: The Commission's analysis of information provided by the parties.

30. Furthermore, there are currently (and there would remain after the Proposed Transaction is put into effect) a number of other suppliers of retail ECS such as eir, Vodafone, Sky and BT Ireland. These competitors will continue to act as a competitive constraint on Liberty Global regionally and nationally following the implementation of the Proposed Transaction.
31. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns with respect to the parties' overlapping activities at the retail level in the State.

The wholesale acquisition of TV channels

32. Both Liberty Global and Casey Cable negotiate TV channel carriage agreements with owners of TV channels for their retail TV offerings.
33. The parties estimate that Liberty Global, as an acquirer of TV channels, had a market share of [20-30]%, while Casey Cable had a market share of less than [0-10]% based on

¹⁸ Source: Information provided by the parties. The parties were not able to retrieve market share estimates of other providers. In its market review of wholesale high quality access at a fixed location in 2016, ComReg estimated that at the end of 2015 the highest market shares in terms of leased line circuits were held by eir, BT and Vodafone. See "[Market Review: Wholesale Access at a Fixed Location](#)", ComReg document number 16/69, dated 18 August 2016.

¹⁹ Source: Information provided by the parties.



the total spend by retail TV services providers for the acquisition of pay-TV channels in the State in 2017. Thus, the implementation of the Proposed Transaction will lead to a minimal increase in Liberty Global's market share.

34. In addition, there are currently (and there would remain after the Proposed Transaction is put into effect) a number of other wholesale acquirers of TV channels including eir, Sky and Vodafone. These competitors will continue to act as a competitive constraint on Liberty Global following the implementation of the Proposed Transaction.
35. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns with respect to the parties' overlapping activities in the acquisition of TV channels in the State.

Vertical relationship

36. There is a vertical relationship between the parties in the State²⁰ as Liberty Global supplies its FTA channels (i.e., TV3, 3e and be3) to Casey Cable.
37. The Commission considers that this vertical relationship (and any potential vertical relationships between the parties) will not give rise to any vertical foreclosure concerns in the State for the following reasons:
 - There are a number of well-established companies competing with Liberty Global in the supply of TV channels such as RTÉ and Sky. There would not be input foreclosure as competitors of Liberty Global at the retail level would continue to have a choice between a number of providers of TV channels. Furthermore, as noted in M/16/038 - *Liberty Global/UTV Ireland*²¹, TV3 Television Network Limited ("TV3 Group"), a wholly-owned subsidiary of Virgin Media, holds a TV programme service contract which requires the holder of this contract to offer all appropriate broadcasting platforms access to its

²⁰ In addition, following completion of the Proposed Transaction, Liberty Global could potentially start to supply wholesale leased lines, domestic call transit services, wholesale Internet connectivity services and wholesale call termination services to Casey Cable.

²¹ See paragraph 46 in M/16/038 - *Liberty Global/UTV Ireland*.



contracted FTA channels²². Accordingly, TV3 Group cannot refuse a request from any appropriate network to carry TV3 Group's TV3 channel in the State²³.

- With regard to customer foreclosure, the number of subscribers is critical to any TV broadcasting platform. The number of channels a platform carries is an important element for the viewers to consider when choosing a platform provider. Therefore, it would appear to be counterintuitive for the merged entity to carry fewer channels. Furthermore, following the implementation of the Proposed Transaction, there will remain a large number of companies who will purchase TV channels from Liberty Global's competitors such as eir, Vodafone and Sky²⁴. Liberty Global's competitors at the wholesale level will not be foreclosed from supplying TV channels in the State.

38. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

39. 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

40. The parties have informed the Commission that the SPA contains a number of restrictive obligations on the Sellers. The duration of those restrictive obligations does not exceed the maximum duration acceptable to the Commission²⁵. The Commission considers these obligations to be directly related to and necessary for the implementation of the Proposed Transaction insofar as they relate to the State.

²² Section 70(1) of the Broadcasting Act 2009 requires that the holder of a TV programme service contract must offer its contracted TV programme service as an FTA service.

²³ Subject to agreement as to fair, reasonable and non-discriminatory terms of use pursuant to Section 77(11) of the Broadcasting Act 2009. The Commission notes this obligation applies only to linear TV services and not to Liberty Global's VoD services.

²⁴ As highlighted in Table 1 above, Casey Cable's market share is below 1% in any of the analysed retail markets.

²⁵ 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, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby Liberty Global plc, through its wholly owned subsidiary, Virgin Media Limited, would acquire sole control of P.B.N. Holdings Limited and its subsidiary Casey Cablevision 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.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission