



# DETERMINATION OF MERGER NOTIFICATION M/21/026 – CVC/SIX NATIONS RUGBY

---

## Section 21 of the Competition Act 2002

### Proposed acquisition by CVC Funds of certain ownership interests in the business of Six Nations Rugby Limited

Dated: 24 June 2021

---

#### Introduction

1. On 14 May 2021, in accordance with commitments<sup>1</sup> secured under Part 3 of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed transaction whereby certain ownership interests in the business of Six Nations Rugby Limited (“SNRL”) will be acquired by a newly incorporated company, Oval BidCo UK Limited (“CVC Investor”), which is to be invested in by certain funds that are advised and/or managed by the CVC Network<sup>2</sup> (the “Proposed Transaction”).

#### The Proposed Transaction

2. The Proposed Transaction is to be implemented pursuant to a transaction agreement dated 19 February 2021 between the Irish Rugby Football Union (“IRFU”), [The] Welsh Rugby Union Limited, the Scottish Rugby Union Limited, the Federazione Italiana Rugby, the Rugby Football Union and the Fédération Française de Rugby (collectively, “the Unions”), CVC Investor and a CVC guarantor entity<sup>3</sup>.

---

<sup>1</sup> The Competition and Consumer Protection Commission’s determination in M/19/034 - CVC Funds/Celtic Rugby DAC included a commitment by CVC that “In the event that: (a) an entity invested in by the CVC Funds enters a legally binding agreement to, directly or indirectly, acquire control (for the purposes of section 16(1) of the Act) over the commercial activities of the Six Nations Competition (the “Possible Transaction”); (b) the Possible Transaction is not required to be notified to the Commission under section 18(1) of the Act, CVC agrees that it will voluntarily notify the Possible Transaction to the Commission before it is put into effect, pursuant to Section 18(3) of the Act.” See <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-19-034-cvc-funds-celtic-rugby-dac/>

<sup>2</sup> The CVC Network consists of CVC Capital Partners SICAV-FIS S.A. and each of its subsidiaries from time to time, and CVC Capital Partners Advisory Group Holding Foundation and each of its subsidiaries from time to time, which are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of investment funds or vehicles managed or advised by a member of the CVC Network (the “CVC Funds”), (collectively “CVC”).

<sup>3</sup> The CVC guarantor entity for the purposes of the transaction agreement for the Proposed Transaction is Cobalto Holdings 2 Limited, a private limited company incorporated under the laws of Jersey.



3. SNRL acts as agent of the Unions for the commercialisation of media rights and sponsorship packages in relation to all of the annual Six Nations Rugby Championship (the “Six Nations Championship”), the Autumn Internationals series (the “Autumn Internationals”) and certain other related commercial rights (collectively, the “Six Nations Business”). It is proposed that pursuant to the Proposed Transaction that CVC Investor, will acquire a minority interest in a newly incorporated company, New Six Nations Limited (“N6NL”), which will become the owner of SNRL.
4. The Proposed Transaction will result in CVC Investor acquiring a shareholding of approximately 14.3% in N6NL. The Unions, will own the remaining 85.7% shareholding in N6NL<sup>4</sup>. The CVC Investor will, due to certain veto rights<sup>5</sup>, acquire negative control over, inter alia, certain defined business activities of N6NL.

## The Undertakings Involved

### ***Acquirer: CVC***

5. [...]. CVC is a global private equity and investment advisor business. CVC consists of CVC Capital Partners SICAV-FIS S.A. and each of its subsidiaries from time to time, and CVC Capital Partners Advisory Group Holding Foundation and its subsidiaries from time to time, which are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of the CVC Funds. The CVC Funds hold interests in a number of companies in various industries including chemicals, utilities, manufacturing, retailing and distribution, primarily in Europe, the United States and the Asia-Pacific region.
6. The parties state in the notification that through a number of existing minority investments, CVC currently has de facto control<sup>6</sup> over the commercial rights of certain other rugby properties, namely, the Premiership Rugby competition operated by Premiership Rugby Limited (“PRL”), the PRO14 competition (“PRO14”) and European Professional Club Rugby (“EPCR”).

---

<sup>4</sup> The Unions will acquire this interest in N6NL through a company called New 6N [Investor] Limited.

<sup>5</sup> The veto rights are over certain reserved matters relating to N6NL which include approval of a business plan, budget and appointment of senior management (Chairman and CEO).

<sup>6</sup> See also M/19/034 CVC Celtic Rugby for further information on existing minority investments available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2019/11/Determination-M-19-034-CVC-Celtic-Rugby.pdf>



7. For the year ending 31 December 2019, the CVC generated worldwide turnover of approximately €[...], of which €[...] was generated in the State.

***Target: SNRL - Six Nations Business***

8. SNRL is an Irish registered company which acts as the agent of the Unions for the commercialisation of media rights and sponsorship packages in relation to the Six Nations Business. Prior to February 2020, SNRL's commercial operations were limited to the Six Nations Championship, and the broadcasting rights to the Autumn Internationals were sold by the Unions individually. However since February 2020, the broadcasting rights to the Autumn Internationals are now also sold by SNRL on behalf of the Unions.
9. SNRL currently licenses the Six Nations broadcasting rights worldwide to a series of broadcast partners. The main television audiences are, however, based in England, Ireland, Scotland, Wales, Italy and France (i.e., the nation's competing in the rugby events).
10. SNRL entered into media rights agreements for the territory of the State with the Virgin Media group (formerly TV3 Television Network Limited), in December 2015, for full match coverage in respect of the Six Nations Championships for the period from 2018 to 2021. SNRL also entered into media rights agreements for the territory of the State with Raidió Teilifís Éireann ("RTE"), in November 2015, for clips in respect of the Six Nations Championships for the period from 2018 to 2022. The RTE agreement provides for broadcasts in Irish as well as in English.
11. In February 2020, SNRL initiated a consolidated invitation to tender process for the United Kingdom and Irish rights to the Six Nations Championship (2022 to 2024), Autumn Internationals (2020 to 2022), Rugby World Cup ("RWC") warm up matches (2023) and certain other international rugby matches. This tender process was suspended as a result of the uncertainties created by the COVID-19 pandemic. SNRL has recommenced a process of marketing its rights by way of a request for proposals (dated 3 February 2021) for broadcasting contracts for the forthcoming rights cycle.



12. [...] <sup>7</sup>. Following the request for proposals, SNRL has commenced joint long form contract discussions with Virgin Media Television and RTE, having agreed a joint proposal in principle, regarding media rights for the territory of the State.
13. In relation to sponsorship, SNRL enters into centralised sponsorship agreements relating to the Six Nations Championship as agent of the Unions. SNRL typically appoints third party agencies to advise on sponsorship strategy and act as intermediaries between SNRL and the relevant brand owners. The Six Nations Championship's principal sponsorship agreement is with the United Kingdom-based beverages company Diageo plc. (owner of the *Guinness* brand), with *Guinness* being the title sponsor and the official beer of the Six Nations Championship.
14. With respect to the Autumn Internationals (and the Additional Matches<sup>8</sup>) there are currently no centralised sponsorship arrangements. Each national member of the Union enters into its own sponsorship arrangements for its national team's participation in these matches. SNRL, however, is currently seeking a sponsor for the Autumn Internationals on a centralised basis.
15. The majority of revenue generated by the Six Nations Business, approximately €[...] in the financial year ending 31 August 2020, is derived from the sale of television and radio broadcasting rights.
16. For the year ending 31 August 2020, the Six Nations Business generated worldwide turnover of €[...] <sup>9</sup>, of which €[...] <sup>10 11</sup> was generated in the State, all from broadcasting.

### Rationale for the Proposed Transaction

17. The parties state the following in the notification:

*"The Parties consider that the Proposed Transaction will bring about the following benefits:*

---

<sup>7</sup> [...].

<sup>8</sup> Additional matches includes RWC warm-up matches, certain second tier men's matches, women's Six Nations matches, and any other matches in which any Union's men's international team participates where the relevant Union controls the applicable media or sponsorship rights

<sup>9</sup> Converted from GBP to EURO using the average ECB exchange rate from 31.08.2019 – 31.08.2020 of 1.1406.

<sup>10</sup> Converted from GBP to EURO using the average ECB exchange rate from 31.08.2019 – 31.08.2020 of 1.1406.

<sup>11</sup> This does not include other income i.e. centralised sponsorship and other commercial income generated on behalf of the Six Nations Business, as no such income can be attributed specifically to the State.



- (a) *The CVC Network's experience and expertise, achieved through previous and CVC Funds' existing holdings of sports rights, will facilitate and support significant opportunities to grow engagement, among both existing and new rugby fans. This will be achieved by creating original content to improve viewers' understanding of rugby and taking advantage of new opportunities to expand visibility of the game, for example, by tapping into new forms of live sports engagement globally. Such opportunities include the emergence of over-the-top (OTT) platforms in the distribution of sports content such as Amazon Prime (through its recent acquisition of UK broadcasting rights to the Autumn Nations Cup alongside Channel 4 for 2020 and to the FA Premier League football alongside other broadcasters from 2019/2020 for three seasons );*
- (b) *CVC Investor and the Unions foresee a structural shift in the game towards digital, a transition which has been accelerated by the effects of the COVID-19 pandemic. The CVC Funds' investment will support this transition and will allow the expansion and development of the digital and data capabilities of the rugby properties;*
- (c) *The rugby properties (i.e. the Six Nations Business on the one hand, and club rugby on the other hand), while representing very different propositions to broadcasters, viewers and advertisers, nevertheless have broadly similar business models with equivalent revenue streams, operations and activities. This creates the opportunity for efficiencies and synergies across a number of commercial and operational areas by reducing duplication across the rugby properties and sharing resources where appropriate; and*
- (d) *The above efficiencies and growth opportunities are expected to result in enhanced broadcasting revenues through SNRL. All revenues generated by Unions, including proceeds from broadcasting and sponsorship rights, are re-invested into the sport of rugby in each Union's respective territory, once operating costs are deducted....."*

### **Third Party Submissions**

18. No submissions were received.

### **Market Enquiries**

19. During the review process the Commission circulated questionnaires to two broadcasting customers, neither of whom expressed concerns regarding the Proposed Transaction.

### **Cooperation with the CMA**

20. The Proposed Transaction was also notified to the Competition and Market Authority ("the CMA") in the United Kingdom. The initial period for consideration of the Proposed Transaction



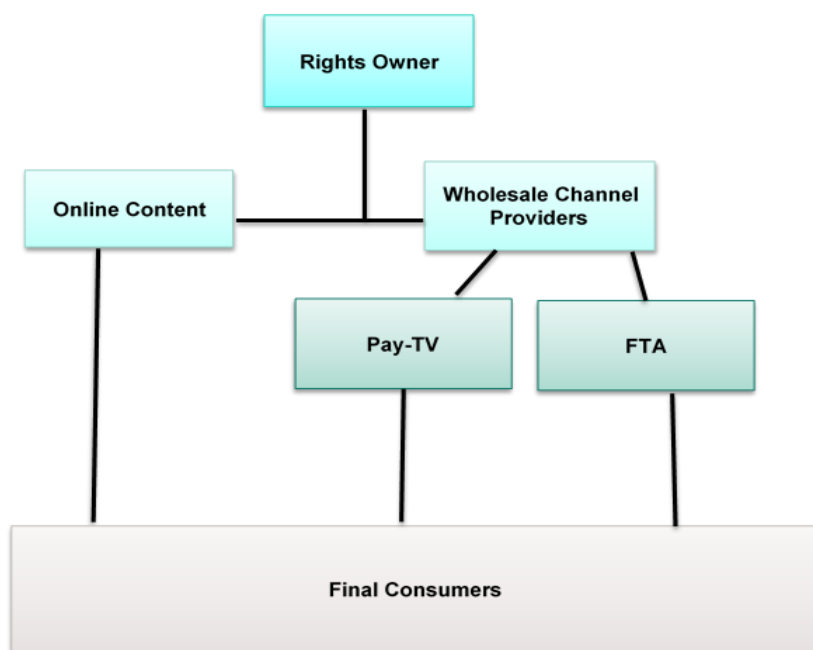
under section 34ZA(3) of the UK Enterprise Act 2002 commenced on 27 May 2021. The Commission engaged with the CMA regarding possible theories of harm resulting from the Proposed Transaction.

### Industry Background

21. In its determination in *M/19/034 – CVC Funds/Celtic Rugby DAC*, the Commission examined the potential market for the licencing of TV broadcasting sports rights and other commercial rights, including sponsorship<sup>12</sup>. The Commission's analysis in that determination provides a useful background to the industry in which the Proposed Transaction takes place.

22. The typical distribution system for the sale of television broadcasting rights for sports events in the State is illustrated in Diagram 1 below.

**Diagram 1: Distribution system for the sale of TV broadcasting rights for sports events in the State**



Source: The Parties

23. The typical distribution system starts with the entity which owns the rights to the relevant sports event or competition. This can be the owner of the relevant competition but can also be a separate commercial entity, which has acquired the rights for resale.

<sup>12</sup> For the Public Determination, please see <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m-19-034-cvc-funds-celtic-rugby-dac/>



24. Sports rights are typically licensed by rights owners on a territorial basis in “packages” (i.e., for a fixed number of years/seasons/events/matches, etc.) directly to wholesale channel providers (i.e., television broadcasters) or to online content providers.

*Television broadcasters in the State*

25. The main television broadcasters active in the acquisition of Irish sports rights in the State are listed in Table 1 below:

**Table 1: Television Broadcasters active in the acquisition of sports rights in the State**

	Broadcaster	Description
1	Raidió Teilifís Éireann (“RTÉ”)	RTÉ is the national public service broadcaster in the State. It is financed through a combination of TV licence fees and private advertising.  RTÉ operates four Free to Air (“FTA”) channels, two of which have sports offerings (RTÉ One and RTÉ2).
2	Teilifís na Gaeilge (“TG4”)	TG4 is the national Irish language public service broadcaster, focused on providing Irish language programming.  TG4 currently has a sports offering including certain PRO14 matches and GAA.
3	Virgin Media Television (“Virgin Media”) (previously TV3)	Virgin Media is an Irish broadcaster owned by Virgin Media Ireland.  Virgin Media operates three FTA channels (Virgin Media One, Virgin Media Two and Virgin Media Three) which include a sports offering including the RWC, Six Nations Championship and UEFA Champions League football.  Virgin Media also offers a pay-TV sports channel: Virgin Media Sport.
4	Eircom Sport Limited	Eircom Sport limited is a subsidiary of Eircom Limited (“Eir”).



	("Eircom Sport") <sup>13</sup>	The Eir sports channels are pay-TV channels only available to customers via a subscription service.
5	Sky Limited ("SKY")	<p>Sky offers pay-tv sports channels under the <i>Sky Sports</i> brand.</p> <p>In the UK and Ireland, Sky operates a number of dedicated sports channels such as Sky Sports Premier League, Sky Sports F1 and Sky Sports Golf, in addition to channels with mixed sporting content.</p> <p>Since August 2019, Sky is the official distributor in Ireland of BT Sport and Premier Sport.<sup>14</sup></p>

Source: The Commission, based on information provided by the notifying parties

26. The notifying parties state in the notification that when assessing what sports content to acquire, television broadcasters consider the following:

- a. Attracting a large number of viewers;
- b. Attracting a good mix of viewers; and,
- c. Ensuring that the mix of content will attract viewers throughout the year (i.e., in the context of the broadcaster's yearly schedule).

27. The notifying parties state that as television broadcasters are primarily interested in attracting a high number of viewers, all television content, such as movies and drama series, exert a strong competitive constraint on sports content.

28. When considering how much to spend on sports content, television broadcasters typically consider the following factors:

- a. **Amount of budget dedicated to sport.** Broadcasters will typically have a budget to spend on the acquisition of content, including sports;
- b. **Attractiveness of sports content/commercial value of sport.** The commercial value of sports content to a television broadcaster has two main elements: (i) the

<sup>13</sup> The Commission understands that Eircom Sport is to cease trading in 2021. For more information, please see: <https://www.rte.ie/news/business/2021/0519/1222711-eir-sport-to-cease-broadcasting-later-this-year/>

<sup>14</sup> <https://www.irishtimes.com/sport/rugby/eir-confirm-that-customers-will-no-longer-receive-bt-sport-free-of-charge-1.3942893>





advertising and sponsorship value which is driven by audience numbers and demographic; and, (ii) the subscription value (i.e., the number of customers who would take up, drop or switch subscription if the sports content rights moved);

Advertising and sponsorship opportunities will increase the value of a sports event. A television broadcaster may have the opportunity to benefit from additional advertising revenue due to interest from companies linked to the sport by sponsorship agreements. Furthermore, high profile sporting events (particularly home country events) draw viewers and allow television broadcasters to charge high premiums for advertising slots around such sports events;

- c. **Timing of sports events.** Timing is a factor for television broadcasters as they seek content to fill their schedules. Broadcasters will try to avoid overlapping schedules as they would not otherwise receive the full commercial benefit in exploiting the broadcasting rights;
- d. **Other factors** include the reputational value of showing certain sports events, the manner in which the entities involved price and sell their goods and or/services e.g. the degree of exclusivity.

## Market Definition

### *Horizontal Overlap*

29. There are a number of potential areas of horizontal overlap between the parties in the State:  
(i) the supply of television broadcasting rights; (ii) the supply of audio/other broadcasting rights; and, (iii) the provision of sponsorship/advertising.

30. In relation to (ii) the supply of audio/other broadcasting rights and (iii) the provision of sponsorship/advertising, revenue generated by the parties from these business activities represent a minimal share of each respective market in the State, therefore the Commission did not conduct further assessment in relation to these two activities as it considered that it was not likely to raise any competitive concerns<sup>15</sup>.

---

<sup>15</sup> [...].



31. Therefore when examining the likely competitive impact of the Proposed Transaction, the Commission will focus on the horizontal overlap between the notifying parties in relation in the supply of television broadcasting rights.

## The Supply of Television broadcasting rights

### Product Market Definition

#### Views of the Parties

32. The parties state in the notification that within the different genres of TV content, including sport, it would only be possible to identify a specific sub-genre as a market in the rare circumstances where it could be a material driver of subscriptions on a stand-alone basis (for pay-TV broadcasters) or attract a particular type of viewers or advertisers (for FTA broadcasters). The parties state the following in the notification:

*“..there is nothing about rugby competitions (including the Six Nations Championship, Autumn Internationals, the Additional Matches, PRO14, the EPCR Competitions and Premiership Rugby) that make them “must-have” content for broadcasters..”*

33. As stated above, when assessing what content to acquire, a key consideration for television broadcasters is viewership figures. The parties provided data on viewership levels in the State for a selection of live sports events in 2018/2019 as shown in Table 2 below. The parties state in the notification that the UEFA Champions League Football, FA Premier League and Hurling and Gaelic Football all attracted similar viewer hours to the Six Nations and higher viewer hours than the Autumn Internationals in the State<sup>16</sup>.

**Table 2. Viewership levels in the State for major sports events in 2018/2019 (unless stated otherwise)**

Sport	Competition	Channel	Individuals 4+ Viewer hours	Averaged to yearly viewership levels	Share of yearly viewership

<sup>16</sup> The parties also submitted data on broadcaster spend. This broadcaster spend data mostly covered both UK and Ireland rights. The parties were unable to source 'ROI only' broadcaster spend data. According to the parties such data is not readily available because the ROI TV market is relatively small compared to other countries and also because UK and Ireland rights are often sold together as a package. The data the parties submitted in relation to broadcasters on the spend on the PRL, the EPCR Competitions, PRO14, the Six Nations Championship and Autumn Internationals was less than [0-5]% of all sports broadcasting spend in the UK and the State. The parties stated that this is very low, and does not indicate that rugby is a must have property.



Football	FIFA World Cup	BBC1 / BBC2 / RTE 2	[...]	[...]	[5-10]%
Rugby Union	Rugby World Cup (2015)	3E / UTV / Virgin Media One	[...]	[...]	[5-10]%
Athletics	Rio Olympic Games (2016)	BBC1 / BBC2 / RTE 2	[...]	[...]	[5-10]%
Rugby Union	Six Nations	3E / BBC1 / Virgin Media One	[...]	[...]	[5-10]%
Football	UEFA Champions League	Be3 / RTE 2 / Virgin Media One	[...]	[...]	[5-10]%
GAA	Gaelic Football	RTE One / RTE 2 / Sky Sports Arena / Sky Sports Main Event	[...]	[...]	[5-10]%
GAA	Hurling	RTE 2 / Sky Sports Arena	[...]	[...]	[5-10]%
Football	Premier League	Sky 1 / Sky Sports Main Event / Sky Sports Premier League	[...]	[...]	[5-10]%
Rugby Union	Pro14	EIR Sport 1 / TG4	[...]	[...]	[5-10]%
Woman's Football	Women's FIFA World Cup	BBC1 / BBC2 / RTE 2 / TG4	[...]	[...]	[0-5]%
Golf	European Tour Golf	BBC2 / EIR Sport 1 / Sky Sports Golf / Sky Sports Main Event	[...]	[...]	[0-5]%
Rugby Union	European Rugby Champions Cup / Challenge Cup	BT Sport / TV3	[...]	[...]	[0-5]%
Tennis	Wimbledon	BBC1 / BBC2 / EIR Sport 1	[...]	[...]	[0-5]%
Athletics	European Championships	BBC1 / BBC2 / RTE One / RTE 2	[...]	[...]	[0-5]%
Rugby Union	Autumn Internationals	Channel 4 Ireland / Sky / RTE / BBC	[...]	[...]	[5-10]%
Tennis	ATP Tour	BBC1 / BBC2 / EIR Sport 1 / Sky Sports Arena / Sky Sports Main Event	[...]	[...]	[0-5]%
Football	EFL Championship	Sky Sports Football / Sky Sports Main Event	[...]	[...]	[0-5]%
Football	FA Cup	BBC1 / BBC2 / EIR Sport 1	[...]	[...]	[0-5]%
Athletics	IAAF World Championships (2017)	BBC1 / BBC2	[...]	[...]	[0-5]%



Snooker	World Snooker Championships	BBC1 / BBC2	[...]	[...]	[0-5]%
Golf	The Open Championship	Sky Sports Golf / Sky Sports Main Event	[...]	[...]	[0-5]%
Golf	Ryder Cup	Sky Sports Golf / Sky Sports Main Event	[...]	[...]	[0-5]%
Darts	World Darts Championship	Sky Sports Arena / Sky Sports Main Event	[...]	[...]	[0-5]%
Motorsports	Formula 1	Channel 4 Ireland / Sky 1 / Sky Sports Main Event	[...]	[...]	[0-5]%
American Football	NFL	BBC1 / BBC2 / Sky Sports Arena / Sky Sports Main Event	[...]	[...]	[0-5]%
Darts	Premier League	Sky Sports Main Event	[...]	[...]	[0-5]%
Basketball	NBA	Sky 1 / Sky Sports Arena / Sky Sports Football / Sky Sports Main Event	[...]	[...]	[0-5]%
Cricket	International Cricket (in England)	Sky Sports Main Event	[...]	[...]	[0-5]%
Rugby League	Super League	Sky Sports Arena / Sky Sports Main Event	[...]	[...]	[0-5]%
Rugby Union	Premiership Rugby	BT Sport	[...]	[...]	[0-5]%
Rugby Union	Rugby Championship (SANZAAR)	Sky Sports Main Event	[...]	[...]	[0-5]%
Rugby Union	Super Rugby (SANZAAR)	Sky Sports Arena / Sky Sports Main Event	[...]	[...]	[0-5]%
Total Sports Rights Market			[...]	[...]	100%

Source: The Commission, based on information provided by the parties, which used *GLANCE formerly EURODATA TV, Oliver & Ohlbaum*.

34. The parties' state in the notification that there is a broad range of sports content available that offers comparable viewership figures, and comparable (or better) value to Irish television broadcasters. The parties state in the notification that:



*“any attempt to raise prices which does not reflect an improved product would not be commercially viable as broadcasters would simply switch their spend to the many alternative sports properties”.*

35. The parties argue that the demographic characteristics of the rugby audience also show that while rugby attracts a relatively high proportion of an older demographic in its fan base, it is not unique in this regard and state that rugby shares this space with a range of other sports including football, Formula 1, golf, tennis and cricket.

36. In the notification, the parties refer to an internal assessment document prepared by CVC which they state acknowledges the intense competition faced by rugby from other sports:

*“[...]”<sup>17</sup>*

37. For these reasons the parties state in the notification:

*“... that the **narrowest** plausible frame of reference for the CCPC's assessment of the Proposed Transaction is the sale of TV broadcasting rights to broadcasters for all sports events available to viewers in the State”.*

38. The parties also state in the notification that even “all sports content” would be a narrow frame of reference as:

*“Other genres of entertainment (e.g. movies and TV series) can replace sports content, and thus pose a strong competitive constraint on sports content”*

39. The parties further state;

*“..traditional linear TV broadcasting now competes for consumers’ time and engagement in a broad entertainment space. The rapid rise over the last 10-15 years of YouTube, on-demand subscription TV (e.g. Netflix and, Amazon Prime), gaming (e.g. Fortnite) and social media (e.g. Facebook, Twitter and Instagram) has transformed the*

---

<sup>17</sup> [...].



*entertainment space, with all these forms of entertainment competing for consumers' attention".*

40. The parties state that even if the CCPC were to consider a narrower frame of reference for rugby only, the PRO14, the EPCR Competitions, Premiership Rugby on the one hand, and the Six Nations Championship and the Autumn Internationals on the other hand, are not close alternatives for broadcasters or viewers. As is typical of all types of content, there is a high degree of differentiation between different sports properties, which vary greatly in terms of scheduling, audience demographics, viewership and tiering. The parties state:

*"club and international rugby competitions have an insignificant share of supply of the overall market for sports content. Within this broader market, they compete more closely with other sports properties than with each other and can thus not be a significant constraint on each other's pricing from a broadcaster's perspective".*

#### *Views of the Commission*

41. In its determinations in *M/19/034 CVC Funds/Celtic Rugby DAC*<sup>18</sup>, the Commission did not define the precise relevant product market but assessed the competitive impact of that transaction by reference to (i) the market for the sale of TV broadcasting rights to broadcasters for all major sports events; and, for completeness, (ii) the narrower market for the sale of TV broadcasting rights to broadcasters for rugby union events.
42. In its determination in *M/13/003 - BT/ESPN Global*, the Commission's predecessor, the Competition Authority, did not define the precise relevant product market but assessed the competitive impact of that transaction by reference to the upstream acquisition (i.e., the purchase by broadcasters) of TV broadcast rights for sports events<sup>19</sup>. In *M/06/089 Doughty Hanson/Setanta* the Competition Authority considered the proposed acquisition of joint

---

<sup>18</sup> Public determination is available at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2019/11/Determination-M-19-034-CVC-Celtic-Rugby.pdf>

<sup>19</sup> Public determination is available at <https://www.ccpc.ie/business/mergers-acquisitions/merger-notifications/m13003-bt-espn-global/>



control of Setanta Sports Holdings Limited by Doughty Hanson (then owner of TV3) by reference to the market for the acquisition of Irish sports rights.<sup>20</sup>

43. In its decision in *ME/6651/16 Liberty Media/Formula 1*, the Competition and Markets Authority in the United Kingdom considered, but ultimately left open, whether the broadcasting of sports events should be segmented by type of content<sup>21</sup>.

44. In its decision in *COMP/C.2-37.398*, in relation to the joint selling of the commercial rights of the UEFA Champions League<sup>22</sup>, the European Commission stated the following:

*"The TV rights of football events create a particular brand image for a TV channel and allow the broadcaster to reach a particular audience at the retail level that cannot be reached by other programmes. In pay-TV football is a main driver of the sale of subscriptions. As regards free TV, football attracts a particular consumer demographic and hence advertising, which cannot be attracted with other types of programming."*

45. The European Commission found the FA Premier League and UEFA Champions League are particularly attractive for broadcasters as stand-alone drivers of paying subscribers and are therefore materially more valuable than other sports. In other words, the FA Premier League and UEFA Champions League deliver a sufficiently high number of dedicated sports fans who are prepared to pay subscriptions on a regular basis.

46. In considering the Proposed Transaction in this case, the television broadcasters that the Commission contacted stated that they seek to appeal to a cross section of viewers and do this by providing a broad variety of content (including sports content). They stated that traditional linear TV<sup>23</sup> broadcasting competes for viewers' time in a broad entertainment sector, increasingly including pay TV and on-demand subscription TV. Broadcasters contacted by the Commission expressed the view that they were mindful of the importance of attracting younger audiences, as well as older viewers. In order to reach a broad audience, broadcasters

---

<sup>20</sup> Public determination is available at [https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/Determination\\_-\\_m\\_06\\_089\\_doughtyhanson-setanta\\_Public\\_0.pdf](https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/Determination_-_m_06_089_doughtyhanson-setanta_Public_0.pdf)

<sup>21</sup> See paragraphs 30-35 of the decision at <https://www.gov.uk/cma-cases/liberty-media-formula-one-merger-inquiry>

<sup>22</sup> Decision is available here <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003D0778>

<sup>23</sup> Linear TV means viewed at the time of broadcast.



expressed the view to the Commission that they require a wide variety of content, and want to show to advertising customers that they can attract a broad audience. Neither of the broadcasters stated that rugby content was a must-have for them (unless it was “listed” pursuant to broadcasting legislation as being an event of major importance<sup>24</sup>).

47. One broadcaster stated that while sports content such as the Six Nations were very attractive, they have to work within a particular budget and cannot compromise on their broad content remit in favour of high-profile sports content. A separate broadcaster expressed the view to the Commission that the main criteria for selecting content is the average cost per hour to broadcast the content and the potential audience it will reach, which will provide an indication of the return on advertising. The broadcaster stated that it considers all sports when selecting content and will work with each individual sports rights holder to evaluate the viability, attractiveness and fit for the sports rights on offer. The broadcaster stated that all of these factors will be considered within a specific budget along with the impact the content would have on commercial return, brand association and scheduling/timing.
48. The same broadcaster stated that increasingly the FTA broadcasters seek additional rights for their player/streaming services to keep up with the changing behaviours and demands of audiences. This is something that has not evolved naturally for distributors as they try to keep distance between the linear rights and the rights that broadcasters look for in respect of their player/streaming services.
49. Neither of the television broadcasters believed that the PRO14, the EPCR, the PRL or the Autumn Internationals were good substitutes for the Six Nations, given the difference in scheduling, viewership levels, and demographics of viewers. One broadcaster said that if they could not get the rights to broadcast the Six Nations they would look for something which could obtain similar viewership and that did not necessarily have to be sports content.

---

<sup>24</sup> The Broadcasting Act 2009 designates certain sports events as being of 'major' importance meaning they must be available to Irish FTA broadcasters. The Broadcasting Act 2009 prohibits pay-tv broadcasters who obtain exclusive rights to a designated event from broadcasting unless they make the event available to a FTA broadcaster on request and at the payment of a reasonable market rate. The Minister for the Environment, Climate Action and Communications reviews this list every three years, and the most recent review involved a public consultation in Q4 2020. In terms of rugby the current list (published on 25 October 2017) requires that Ireland's games in the Rugby World Cup Finals Tournament must be provided to FTA broadcasters. [Ireland's Six Nations matches are also designated as requiring deferred (rather than live) FTA coverage].





50. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, based on market enquiries with TV broadcasters, consultation with the CMA and supporting documentation provided by the parties, the Commission does not consider it necessary to analyse the Proposed Transaction by reference to the narrower potential market for the sale of TV broadcasting rights to broadcasters for rugby union events.

51. Therefore, for the purposes of the review of the Proposed Transaction, the Commission has analysed the likely competitive effects of the Proposed Transaction by reference to the potential market for the sale of TV broadcasting rights to broadcasters for all major sports events.

#### *Relevant Geographic Market*

52. In terms of the relevant geographic market, the Commission (and its predecessor the Competition Authority) did not come to a definitive view on the precise relevant geographic market in its previous decisions. However in *M/06/089 Doughty Hanson/Setanta*, the Competition Authority considered the potential relevant geographic market to be the State. The Commission notes that for many sports, the Irish and UK TV broadcasting rights are currently sold together, including for both PRL and EPCR, and therefore the market could be wider than the State. However, for the purposes of its review of the Proposed Transaction, the Commission has analysed the competitive effects of the Proposed Transaction in the narrowest relevant geographic market, i.e., the State.

#### **Competitive Assessment**

53. In their notification, the parties submitted viewership data for all major sporting events available to viewers in the State in 2018/2019 as shown in Table 2 above.<sup>25</sup> The Commission assessed the market shares of the parties as a proportion of viewership hours.

---

<sup>25</sup> The parties also submitted data on broadcaster spend. This data mostly covers broadcaster spend on sports rights in both the United Kingdom and the State. The Parties were unable to source 'Republic of Ireland ("ROI") only' broadcaster spend data. According to the parties, such data is not readily available because the ROI TV market is relatively small compared to other countries and also because sports rights in the United Kingdom and the State are often sold together as a package.



54. The data provided illustrates that CVC, through its interests in the commercial rights of PRL, EPCR Competition and PRO14, had a share of viewer hours of [10-20]% of all major sporting events available to viewers in the State.<sup>26</sup>
55. The Six Nations and the Autumn Internationals had a share of viewer hours of [5-10]% and [10-20]%, respectively. The Proposed Transaction would result in CVC having a controlling interest in the commercial activities of undertakings with a share of viewer hours of approximately [20-30]% of all major sports events available to viewers in the State.
56. Following implementation of the Proposed Transaction, there will be a number of other entities which will act as a competitive constraint on CVC in the potential market for the sale of TV broadcasting rights to broadcasters for all sports events in the State. The Union of European Football Associations (UEFA Champions League) with a share of viewer hours of [5-10]%, Gaelic Athletic Association (GAA Football and GAA Hurling) with a share of viewer hours of [5-10]% and [5-10]% respectively and the Football Association [Premier League Limited] (the Premier League) with a share of [5-10]% of viewer hours respectively, each had similar viewer hours to the Six Nations and higher than the Autumn Internationals in 2018/2019.<sup>27</sup>
57. The Proposed Transaction would result in CVC having a controlling interest in five out of eight rugby competitions broadcast in the State, two being international and three being club competitions. The Commission examined whether the Proposed Transaction could give rise to competition concerns in the potential market for the sale of TV broadcasting rights to broadcasters for all major sports events through the bundling of rugby content rights. The Commission considers that this is unlikely to happen for the following reasons:
- (i) As explained above, the Commission has seen no evidence to indicate that rugby or any of its competitions are “must-have” sports content. While the Six Nations has high viewership levels, these are from FTA stations, which will

---

<sup>26</sup> Data on ROI viewership levels for sports events in 2018/2019 was provided by the parties. The figures included major sporting events such as FIFA World Cup 2018, Rugby World Cup (based on 2015 viewership figures), Olympic Games (2016), Woman’s FIFA World Cup 2019 and the European Athletic Championships. In order to draw reliable conclusions, events that take place on a quadrennial and biannual basis were averaged to yearly viewership levels.

<sup>27</sup> The parties stated in the notification that these are conservative estimates of the overall shares of Premiership Rugby, the EPCR Competitions, PRO14 and the Six Nations Championship and Autumn Internationals, given that Table 2 does not include a number of sports competitions that would also be a credible alternative to the PRL, the EPCR Competitions, PRO14, Six Nations Championship and Autumn Internationals (e.g. US PGA Tour Golf, Diamond League Athletics, National Hockey League, Moto GP, boxing and winter sports, amongst many others).



always reach the widest possible audience, whereas the FA Premier League has comparable viewership levels but this is on pay-tv. The two FTA broadcasters that the Commission contacted did not believe that any rugby content was a “must-have” property for them and that there were alternatives (including non-sport content). Therefore, CVC will not likely have the ability to increase price of rugby content or foreclose rivals sports rights holders as a result of bundling the sale of the rugby content rights which it will acquire following implementation of the Proposed Transaction.

- (ii) TV broadcasters will not be foreclosed downstream if they do not offer rugby content, since rugby is not an essential offering for either FTA or pay-tv broadcasters.
- (iii) Rival sports rights holders will not be foreclosed from access to television broadcasters given that there are an increasing number of routes to market for sports rights holders such as over-the-top (“OTT”) broadcasters<sup>28</sup>.
- (iv) Views expressed by television broadcasters also indicate that they do not consider that bundling by sports rights holders is likely, given that broadcasters typically aim to show a wide variety of sports content that will appeal to the widest possible audience, and therefore broadcasters typically prefer not to show too much content from any one particular sport. It would therefore not make sense commercially for broadcasters to purchase rugby content as a bundle.

58. Furthermore, in relation to the possible bundling of rugby content by CVC following implementation of the Proposed Transaction, the parties state in the notification that it is far from clear that such bundling would be possible to implement or attractive to all of their stakeholders for the following reasons:

- (i) the variety of stakeholders involved, including different teams (club versus national), board members and shareholders;
- (ii) each rugby property’s commercial prerogative to obtain the best commercial outcome for its business on an individual basis;

---

<sup>28</sup> For example over-the top (“OTT”) providers are increasingly important bidders and their business models are evolving. For example, Amazon initially focussed on high volume events, such as tennis (ATP tour), but then experimented with lower volume, higher quality events (e.g. a small number of important FAPL matches and the Autumn Nations Cup).



- (iii) the currently very different distribution models of international and club rugby (for example the Six Nations Championship and Autumn Internationals being distributed on FTA whereas the EPCR is distributed on pay-tv);
- (iv) existing and (currently being negotiated) broadcasting contracts for each of the individual properties with different renewal cycles;
- (v) following completion of the Proposed Transaction, CVC acquires negative control and 1/7<sup>th</sup> vote on commercial decisions in N6NL. As such, the parties state in the notification that CVC would not be in a position unilaterally to implement a fully consolidated market proposition as between the Six Nations and the club rugby properties in which it has a minority interest or over which it already exercises control.

59. The Commission has not identified any evidence to suggest the possible bundling of rugby content following the Proposed Transaction.

60. In the light of the above, the Commission considers that the Proposed Transaction is not likely to lead to any horizontal competitive concerns in the sale of TV broadcasting rights to broadcasters for all major sports events in the State.

### **Vertical Relationship**

61. The parties state in the notification that there is no vertical relationship between the parties in the State and the Commission has not identified any vertical relationship or potential vertical relationship between the parties in the State. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

### **Conclusion**

62. 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**

63. No ancillary restraints were notified.



## **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 transaction whereby certain ownership interests in the business of Six Nations Rugby Limited will be acquired by a newly incorporated company, Oval BidCo UK Limited which is to be invested in by certain funds that are advised and/or managed by the CVC Network<sup>29</sup> 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**

---

<sup>29</sup> The CVC Network consists of CVC Capital Partners SICAV-FIS S.A. and each of its subsidiaries from time to time, and CVC Capital Partners Advisory Group Holding Foundation and each of its subsidiaries from time to time, which are privately owned entities whose activities include providing investment advice to and/or managing investments on behalf of the investment funds or vehicles managed or advised by a member of the CVC Network.