

DETERMINATION OF MERGER NOTIFICATION M/23/066 – SSBL/VIAPLAY

Section 21 of the Competition Act 2002

Proposed acquisition by SSBL Limited of sole control of Viaplay Group Ireland Limited and Viaplay Group UK Sports Limited

Dated: 30 January 2024

Introduction

1. On 18 December 2023, in accordance with section 18(1)(b) 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 SSBL Limited (“SSBL”) would acquire sole control of Viaplay Group Ireland Limited and Viaplay Group UK Sports Limited (together the “Targets”) (the “Proposed Transaction”).¹
2. Given that SSBL carries on a “media business” within the State and the Targets carry on a “media business” elsewhere (within the meaning of section 28A(1) of the Act), the Commission considers that the Proposed Transaction falls within a class of merger specified for the purposes of section 18(1)(b) of the Act² and constitutes a “media merger” for the purposes of Part 3A of the Act.

The Proposed Transaction

3. The Proposed Transaction will be implemented pursuant to a share purchase agreement (the “SPA”) dated 28 November 2023 between Viaplay Group UK Limited (as “Seller”), and SSBL Limited (as “Buyer”). Pursuant to the SPA, SSBL will acquire the legal and beneficial interests in the entire issued share capital of the Targets, and thus sole control of the Targets.

The Undertakings Involved

¹ SSBL and the Targets are referred to collectively in this determination as the “Parties.”

² As specified by the Competition Act 2002 (Section 18 (5) and (6)) Order 2007 (S.I. 122/2007).

The Acquirer

4. SSBL, a company incorporated in the State, is an indirect subsidiary of TDL Media Limited, which in turn is wholly owned by Michael O'Rourke, a private individual. SSBL is active in the broadcasting and production of sports channels³ in the State with a particular focus on soccer, Gaelic games and rugby. SSBL operates the Premier Sports Ireland channels in the State.⁴
5. For the financial year ending 31 December 2022, SSBL's turnover was approximately € [REDACTED] million, all of which was generated in the State.

The Targets – Viaplay Group Ireland Limited and Viaplay Group UK Sports Limited

6. The Targets are also active in the broadcasting and production of sports channels, with three television channels (Viaplay Sports 1, Viaplay Sports 2 and Viaplay Xtra2) and an over-the-top media offering⁵ in the United Kingdom (the "UK"). The Targets' main focus is football and rugby broadcasting. The Targets' primary partners are Sky and Virgin Media, both of which offer the Viaplay Sports 1, Viaplay Sports 2 and Viaplay Xtra2 channels in the UK, with Amazon also offering these channels in the UK.⁶
7. Viaplay Group Ireland Limited is a company incorporated in the State and Viaplay Group UK Sports Limited is a company incorporated in England. The ultimate parent of the Targets is Viaplay Group AB, a Swedish-based entertainment company, which operates several TV channels, video-streaming services, and subscription platforms.
8. For the financial year ending 31 December 2022, Viaplay Group Ireland Limited's worldwide turnover was € [REDACTED]⁷, none of which was generated in the State. For the financial year ending 31 December 2022, Viaplay Group UK Sport Limited's worldwide turnover was € [REDACTED]⁸, none of which was generated in the State.

³ 'Broadcasting and production' involves the acquisition of rights from rights owners, the production of programmes and the distribution of television content via broadcasting of those programmes through the operation of channels.

⁴ SSBL Limited has a [REDACTED] % shareholding in Greencastle Acquisition Limited, an Irish company which together with its subsidiaries forms the Maximum Media Group, which owns several digital channels including the Joe UK and Joe.ie websites, Her.ie and HerFamily.ie.

⁵ 'Over-the-top media offering' refers to a media service or platform that delivers streamed content via internet-connected devices.

⁶ In response to follow-up questions from the Commission, the Parties confirmed that the Targets only have a partnership with Sky and Virgin Media for its channels to be broadcast in the UK.

⁷ Approximately € [REDACTED] using the ECB average exchange rate for 2022 where GBP 1 = EUR 1.17.

⁸ Approximately € [REDACTED] using the ECB average exchange rate for 2022 where GBP 1 = EUR 1.17.

Rationale for the Proposed Transaction

9. The Parties state the following in the notification:

"[SSBL]'s objective is to grow its business in the United Kingdom.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]."⁹

Contact with the Undertakings Involved

10. During its investigation, the Commission requested and received, on an on-going basis, further information and clarifications from the Parties.

Third-Party Submissions

11. No third-party submissions were received.

Competitive Analysis

Horizontal Overlap

12. There is no horizontal overlap between the activities of the Parties in the State.

13. Upstream, SSBL is active in the production and provision of sports content to its own television channels in the State, whereas the Targets are active in the production and provision of sports content to their own television channels in the UK.

14. Downstream, SSBL is active in the production and supply of sports channels in the State, and the Targets are active only in the production and supply of sports channels in the UK.¹⁰

Vertical Overlap

15. No actual vertical relationship exists between the Parties in the State. There is a potential vertical relationship between the Parties in the State. Both Parties are active in (upstream) the

⁹ Merger Notification Form, paragraph 2.6.

¹⁰ SSBL supplies its channels through the broadcasting platforms Sky and NOWTV Ireland. SSBL informed the Commission it has a current contractual relationship with [REDACTED].

production and provision of content to television channels and in (downstream) the supply of television channels for broadcast. The Targets broadcast in the UK via their Viaplay channels and SSBL broadcasts in the State via its Premier Sports Ireland channels. Both the Targets and SSBL are active upstream by acquiring sports rights from the sports rights owner to provide the relevant sports content to their respective channels, or other channels. The Targets do not have any channels in the State, as their Viaplay channels are only available in the UK. However, the Targets could potentially partner with SSBL to broadcast their sports content in the State through SSBL's Premier Sports channels.

Relevant Markets

The supply of sports channels (downstream)

Product Market

16. In the notification, the Parties submit that the precise product market definition can be left open.
17. The Commission has considered the supply of television channels in previous determinations. In its determination in *M/15/074 – Eir/Setanta*, the Commission, without coming to a definitive view as to the precise relevant product market, examined the possible competitive effects of the proposed transaction by reference to (i) the supply of all television channels and (ii) the supply of pay-TV sports channels.¹¹
18. The Commission defines the market to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected by whether the product market is defined more narrowly (e.g. as the supply of sports channels) or more broadly (e.g. as the supply of all television channels). For the purpose of its competitive assessment of the Proposed Transaction, the Commission has assessed the likely competitive effects of the Proposed Transaction by reference to the supply of sports channels.

Geographic Market

¹¹ The Commission's determination in *M/15/074 – Eir/Setanta* is available [here](#).

19. In its determination in *M/15/074 – Eir/Setanta*, the Commission left the relevant geographic market definition open as the Commission found that the choice of geographic market would not materially alter the competitive impact of the proposed transaction in the State.
20. SSBL only broadcasts its channels, Premier Sports Ireland, in the State and the Targets only broadcast their Viaplay channels in the UK.
21. The Commission defines the market to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected however that market is defined. For the purpose of conducting its competitive assessment of the Proposed Transaction, the Commission has assessed the likely competitive effects of the Proposed Transaction by reference to the State.

The production and provision of sports content to television channels (upstream)

Product market

22. Television 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).¹²
23. The Commission defines the market to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant product market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the product market is defined more narrowly (e.g. the production and provision of sports content to television channels) or more broadly (e.g. as the production and provision of all content to television channels). For the purpose of its competitive assessment of the Proposed Transaction, the Commission has assessed the likely competitive effects of the Proposed Transaction by reference to the production and provision of sports content to television channels.

¹² *M/18/046 – Liberty Global/PBN (Casey Cable)*

Geographic market

24. SSBL is active in the production and provision of sports content to television channels in the State whereas the Targets are active in the production and provision of sports content to television channels in the UK.
25. The Commission defines the market to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise relevant geographic market since its conclusion on the competitive impact of the Proposed Transaction will be unaffected however that market is defined.¹³ For the purpose of conducting its competitive assessment of the Proposed Transaction, the Commission has assessed the likely competitive effects of the Proposed Transaction by reference to the State.

Conclusion on Relevant Markets

26. For the purposes of carrying out its competitive assessment of the potential vertical relationship between the Parties, the Commission has assessed the likely competitive effects of the Proposed Transaction by reference to the potential markets for:
 - the production and provision of sports content to television channels; and
 - the supply of sports channels in the State.

Competitive Assessment – Vertical Overlap

27. As set out above, no actual vertical relationship exists between the Parties in the State. However, the Commission has identified a potential vertical relationship between the Parties as SSBL is active in the downstream market for the supply of sports channels for broadcast in the State and the Targets are active in the upstream market for the production and supply of sports content to the Targets' channels in the UK, and other channels with which they partner. The Targets currently do not have a partnership with any channel to broadcast their sports content in the State.

¹³ The Commission notes that the geographic market for the production and provision of sports content could be wider than the State. However, as the Commission had no concerns in the narrower geographic market of the State, it did not analyse a wider geographic market.

28. The Commission has assessed the potential impact of the Proposed Transaction on:
- competition between the merged entity and competing providers of sports content to television channels; and
 - competition between the merged entity and competing suppliers of sports channels.
29. The Commission considers that the Proposed Transaction raises no vertical competition concerns for the following reasons.

Input Foreclosure

30. Input foreclosure may arise as a result of a merger if a merged entity refuses to supply a key product to downstream competitors, or if the merged entity increases the price or offers less attractive terms for the upstream good or service.¹⁴ As set out in the CCPC's Guidelines for Merger Analysis, "*competition concerns may arise from input foreclosure only when the merged entity has market power in the upstream market.*"¹⁵ In this case, the 'input' in question is sports content which is supplied to television channels.
31. The Commission considers that the Proposed Transaction will not give the merged entity the ability and incentive to foreclose downstream suppliers of sports channels for broadcast in the State. The Targets currently have no partnership to provide content to any television channel for broadcast in the State.
32. Following the implementation of the Proposed Transaction, there will remain a number of other businesses at the upstream level which provide content to television channels, for example Sky Sports, TNT Sports, Virgin Media, and Saorview.
33. Furthermore, SSBL has a minimal share of the potential market for the supply of sports channels in the State, with estimated shares of [0-5]% of all television channels in the State¹⁶

¹⁴CCPC Guidelines for Merger Analysis. Paragraph 5.10.

¹⁵ CCPC Guidelines for Merger Analysis, paragraph 5.10.

¹⁶ Estimated by SSBL based on its turnover in 2022 compared to the turnover of other participants in the sector, in response to follow-up questions by the Commission on 16 January 2024.

and [0-5]% of pay-TV sports channels in the State.¹⁷ As noted above, the Targets' sports channels are not currently broadcast in the State.

Customer Foreclosure

34. Customer foreclosure may arise as a result of a merger if a merged entity refuses to purchase from upstream competitors, or if the merged entity decreases the price it is willing to pay or offers less attractive terms to upstream competitors.¹⁸ As set out in the CCPC's Guidelines for Merger Analysis, *"harm to competitors is more likely if the merged entity is a significant customer and hence a significant source of sales revenue for the upstream competitor than if the merged entity is but one of many customers."*¹⁹ Furthermore, *"the incentive to foreclose upstream competitors depends, all things being equal, on the balance between (1) increased production costs, if any, from no longer purchasing inputs from the foreclosed upstream competitor and (ii) increased prices and profits from upstream and/or downstream transactions."*²⁰ In this case, the relevant transaction would be the merged entity's purchases of sports content for its TV channels.
35. The Commission considers that the Proposed Transaction will not give the merged entity the ability to engage in customer foreclosure. The Targets are not currently customers of any third parties in the State. The Proposed Transaction does not raise any customer foreclosure concerns in the State as competitors of the merged entity at the upstream level (i.e. the provision of sports content to television channels) will have a number of other channels with which to partner in order to broadcast sports content downstream to end consumers in the State. Sports channels which broadcast downstream to end consumers in the State include Sky Sports, TNT Sports, Virgin Media and Saorview.
36. The Parties stated to the Commission that the purpose of the Proposed Transaction is for SSBL to grow its business activities in the UK and SSBL currently has no plans to broadcast the

¹⁷ Estimated by SSBL, based on the public market shares provided in the Commission's determination in *M/15/074 – Eir/Setanta* for Setanta sports channels. SSBL estimates that its Premier Sports channels are substantially smaller than the Setanta channels were in 2015, when they had a market share of 15-20%.

¹⁸ See CCPC Guidelines for Merger Analysis. Paragraph 5.14.

¹⁹ CCPC Guidelines for Merger Analysis, paragraph 5.14.

²⁰ CCPC Guidelines for Merger Analysis, paragraph 5.15.

Targets' content in the State. In response to follow-up questions from the Commission provided on 9 January 2024, SSBL stated that “[SSBL] *has no plans, for example, to broadcast the Targets' Viaplay sports channels to customers in Ireland.*”

37. Even if SSBL were to do so, SSBL has, as noted above, an estimated share of [0-5]% of all television channels in the State and a minimal estimated share of all pay-TV sports channels in the State of [0-5]%.
38. Therefore, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion of Competitive Analysis

39. In light of the above, the Commission has concluded that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

40. 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 acquisition whereby SSBL Limited would acquire sole control of Viaplay Group Ireland Limited and Viaplay Group UK Sports 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

Úna Butler

Member

Competition and Consumer Protection Commission