



**Determination of the Competition Authority, dated 12<sup>th</sup> August 2005, under Section 21 of the Competition Act, 2002 in respect of Merger Notification Case No. M/05/025 - Proposed acquisition by Scottish Radio Holdings plc. of Donegal Highland Radio Limited.**

**Introduction**

1. On 1<sup>st</sup> June 2005, the Competition Authority (“the Authority”), in accordance with Section 18 (1) of the Competition Act, 2002 (“the Act”), was notified on a mandatory basis of a proposal whereby Scottish Radio Holdings plc (“SRH”) would acquire the entire issued share capital of Donegal Highland Radio Limited (“Highland Radio”) thereby acquiring sole control of Highland Radio.
2. The Authority advised the parties and the Minister that it considered the transaction to be a “media merger”, within the meaning of Section 23 of the Act.
3. On 30 June 2005, the Authority made a formal request for further information from SRH pursuant to S.20(2) of the Act.

**The Parties**

4. SRH is a media group whose activities, through its subsidiaries, are radio broadcasting and newspaper publishing in the United Kingdom and the State. SRH wholly or partly-owns 24 analogue and digital radio broadcasting services; six digital radio multiplexes and publishes 45 local weekly newspapers. Of these, two analogue radio stations (Today FM and FM104) are broadcast in the State and five local/regional newspapers are published in the State<sup>1</sup>.
5. Today FM broadcasts nationally pursuant to a licence issued by the Broadcasting Commission of Ireland (“the BCI”) targeting an audience demographic of 20-44 year olds.
6. FM 104 broadcasts locally in the Dublin City and County franchise area pursuant to a licence issued by the BCI targeting an audience demographic of 15-34 year olds<sup>2</sup>.

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<sup>1</sup> On 28 June 2005, the Authority was notified on a mandatory basis of the proposed acquisition by EMAP plc. of SRH (Merger Notification Case Number M/05/036 – Determination available from the Authority website at <http://www.tca.ie>) As part of the proposed acquisition, EMAP agreed to sell Score Press Ltd. (SRH’s Irish press division) to Johnston Press plc. on the clearance of the notified acquisition by the Authority. The Authority’s determination of 28 July 2005 cleared the notified transaction. The proposed acquisition by Johnston Press Plc. of Score Press Limited was notified to the Authority on 29 June 2005 and cleared by the Authority on 29 July 2005 (Merger Notification Case Number M/05/037 – Determination available from the Authority website at <http://www.tca.ie>).

<sup>2</sup> SRH also holds licences for two radio stations in Northern Ireland issued by the Office of Communications (“OFCOM”) in the United Kingdom. Downtown Radio is a regional radio station broadcasting across Northern Ireland. Cool FM broadcasts locally in the Belfast region.



7. Highland Radio is a local radio station broadcasting pursuant to a licence issued by the BCI for the County Donegal franchise area. In 2004, Highland Radio was awarded the licence for the County Donegal Franchise area for a second period. Highland Radio targets an audience demographic of 20+ years old playing middle of the road and country music with specialist music programming for a younger audience of 20-30 year olds. Its programming places a strong emphasis on news, current affairs and sports coverage.

### **Relevant Markets**

8. Both SRH and Highland Radio are active in the provision of radio broadcasting services in the State and in the case of SRH, in Northern Ireland also.
9. SRH and Highland Radio compete with other radio stations in respect of the sale of advertising slots of their respective stations and, to this extent, the Parties' activities overlap in the sale of advertising slots on radio.
10. The Authority's enquiries have shown that radio advertising has distinguishing features from other forms of advertising such as print, cinema, TV and outdoor: radio advertising involves substantially less production and placement costs, less production time and can be placed at short notice. That radio advertising is a distinct market is in line with previous Authority decisions<sup>3</sup> and with the European Commission.<sup>4</sup>
11. The type of advertising slots on radio that may be sold by a radio station can, generally, be described as falling into two categories, namely national and local. On this basis, the Authority investigated whether the Parties' activities gave rise to one or two potential areas of product overlap:
  - i. The sale of national advertising on Today FM and Highland Radio; and
  - ii. The sale of local advertising (advertising in the North Donegal franchise area) on each of SRH's radio stations (Today FM, Downtown FM and CoolFM) and Highland Radio<sup>5</sup>.

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<sup>3</sup> For example: Decision No. 591 in relation to Notification No. CA/1/01 – Independent Radio Sales/Shareholders Agreement; Determination Number M/03/033 Scottish Radio Holdings/FM104; and Determination Number M/05/026 Radio Kerry/Midland Radio – all available from The Competition Authority website at <http://www.tca.ie>.

<sup>4</sup> See Case No IV/M.779 – Bertelsmann/CLT at paragraph 19.

<sup>5</sup> While FM104 is owned by SRH, the Authority did not consider that there was or is any potential for overlap in the activities of Highland Radio and FM104.



## **Competitive Analysis**

### **Local Advertising**

12. While the mainstay of Highland Radio's revenue from the sale of its advertising slots derives from local advertising (i.e. advertising sold to local advertisers in the North Donegal region), SRH submitted that Today FM's advertising revenue derives almost exclusively from national advertising. To this extent and on the basis of its investigation, the Authority is satisfied and has concluded that there is no overlap in the activities of Highland Radio and SRH in respect of local advertising.
13. Cognisant of the fact that SRH also operates two further radio stations in the general geographic region of County Donegal and Northern Ireland ("SRH OFCOM-licensed stations"), the Authority investigated the possibility of overlap between Highland Radio and SRH's OFCOM-licensed stations. Specifically, the Authority assessed whether, in the event of a post-merger increase in prices by SRH of local advertising slots on Highland Radio, lost sales (if any) would divert to SRH's OFCOM-licensed stations.
14. The Authority, pursuant to a formal request under S.20(2) of the Act, requested further information from the Parties in this regard and carried out its own investigation.
15. The results of the Authority's investigation demonstrated that Highland Radio's main rival in Northern Ireland was not Downtown Radio or CoolFM but Q102FM located in Derry<sup>6</sup>. The extent to which Highland Radio and Q102FM compete with each other for advertising from local advertisers in the North Donegal geographic region is, however, quite small and limited to certain types of informational advertising in respect of lifestyle and entertainment only.
16. The Authority found that the characteristics in terms of demographic appeal and programming of SRH's OFCOM-licensed stations were too different to substantiate a claim that local advertisers in North Donegal would consider either of these SRH OFCOM-licensed stations as a substitute for Highland Radio in the event of a price increase in Highland Radio's local advertising rates post-merger.
17. Furthermore, the Authority found that both SRH's OFCOM-Licensed stations were considered by other Northern Ireland radio stations and advertisers as very 'Belfast-centric', that is, programming based at or influenced by audiences in the wider Belfast region. This represents an important reason underlying the lack of substitutability, from the perspective of advertisers, between Highland Radio and SRH's OFCOM-licensed stations.

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<sup>6</sup> The broadcasting service licensed by OFCOM to broadcast in Derry under the name 'Q102FM' is owned by UTV which also owns the radio broadcast service 'Q102FM' in Dublin City and County licensed by the BCI.



18. The lack of substitutability is reinforced by the lack of broadcast penetration into the North Donegal area by SRH's OFCOM-licensed stations. Both Downtown FM and CoolFM informed the Authority that the ability to receive a signal in the North Donegal region was minimal given lack of signal strength and/or geographic considerations. In the case of CoolFM, no signal could be picked up in North Donegal. Downtown FM has a limited but low-quality signal in North Donegal which deteriorates the further west into the North Donegal region the signal is accessed.
19. Taking into account the findings of the Authority's investigation into the potential overlap of the Parties' activities in local advertising in North Donegal, the Authority concludes that no competition concerns arise.

### **National Advertising**

20. National advertising on radio can be purchased through advertising slots with a national broadcaster, such as Today FM or RTE or through a combination of strategically-placed local or regional stations providing, in combination and collectively, a similar level of coverage and audience share as a national broadcaster. One such combination is offered by IRS<sup>7</sup>.
21. IRS offers several packages to advertisers wishing to advertise their product nationally. National coverage is provided by IRS through the collective participation of all or several of the IRS stations and non-IRS stations in its advertising packages. Depending on the package chosen by the advertiser, the advertisement will be broadcast on each of the participating local radio stations.
22. In 2003, the Authority investigated the mandatory notification of SRH's proposed acquisition of FM104<sup>8</sup>. At the time of the notification and the Authority's determination, SRH owned Today FM. In its determination, the Authority identified IRS and its products as a competitor (albeit in a limited fashion) of other national radio broadcasting services which sell advertising slots for national advertising campaigns – namely Today FM and the RTE Stations (Radio 1, 2FM and Lyric FM). The structure of the national radio advertising slots product market has not changed in the interim.
23. While Highland Radio is a local radio station, licensed to broadcast in the North Donegal region, it nevertheless derives approximately

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<sup>7</sup> Independent Radio Sales ("IRS") is a central sales office for and set up by independent local radio stations across the country. IRS sells advertising (either local advertising slots or national) on behalf of its members and to a lesser extent, its non-member independent local radio stations. It offers several products to purchasers wishing to buy airtime, for example an 'umbrella package' covering all IRS stations and combinations of individual stations to meet specific marketing goals. In addition to these products, IRS also offers two national advertising products: "The Driver" and "The Bull's Eye".

<sup>8</sup> Determination Number M/03/033 Scottish Radio Holdings/ FM104 – Available on the Competition Authority website at <http://www.tca.ie>.



- [26%] of its advertising revenue from the sale of advertising slots for national advertising campaigns. This is achieved through Highland Radio's participation in national advertising packages offered through IRS.
24. The Authority considered whether the merger would give rise to, *inter alia*, unilateral or coordinated effects which would have the effect of substantially lessening competition in the State for national advertising slots on radio.
  25. The Authority's investigation has concluded that the proposed transaction, does not give rise to unilateral effects concerns, i.e. that the merger, if cleared, will result in an increase in market power sustained over time by SRH which will substantially lessen competition in the market.
  26. However, the Authority has identified the potential for coordinated effects. These effects arise from the existence of structural links between the Parties, as a result of Highland Radio's proprietary interests in and board membership of IRS and its participation in IRS national advertising packages. The potential for exchange of competitor and/or strategic information and the commonality of interest, may lead to co-ordinated effects with adverse effects for consumers.
  27. Specifically, the Authority's concerns in this regard concern Highland Radio's participation in IRS post-merger.
  28. Highland Radio is a founding member and board member of IRS. In addition to offering its own advertising packages directly to advertisers, Highland Radio offers advertising slots to national advertisers through its participation in IRS and IRS products.
  29. Post-merger, therefore, SRH, through its ownership of Highland Radio, would have a presence on the board of and in the operations of its competitor, IRS.
  30. The Authority considers that that the continuation of the current arrangement post merger (the presence of Highland Radio on the IRS Board and the payment by Highland Radio to IRS for sale of its advertising slots on a commission-basis) would give SRH an insight into the operations of one of its few national competitors and could thus facilitate co-ordinated behaviour which may be harmful to consumers.
  31. At the same time, however, the Authority recognises that the inclusion of Highland Radio in IRS national advertising products is an important element contributing to the viability of the IRS national advertising product.
  32. In setting out these concerns to the Parties, the Authority considered a proposal submitted by SRH to assuage the Authority's concerns directly. The proposal submitted provides that:



33. *“Scottish Radio Holdings plc and Donegal Highland Radio Limited (trading as Highland Radio) shall cease any and all forms of participation in the advertising sales of Independent Radio Sales Limited (IRS) on or before six months after the date of completion of the proposed acquisition. The parties commit to relinquish any shareholding in IRS, to cease any involvement in the management of IRS and to remove themselves from the board of IRS within the same timeframe.*
34. *For the avoidance of doubt, this commitment shall not have the effect of preventing IRS from purchasing airtime from Highland Radio for resale to advertisers on an arm’s length basis subject to Highland Radio not participating in any way in the profits accruing to IRS or in the resale of this airtime by IRS.”*
35. The proposal submitted by SRH also reflects the same concerns that the Authority identified in its previous determination in SRH/FM104 but also provides for the removal of Highland Radio from participation in the management of IRS.
36. The Authority notes that one of the conditions imposed in that determination which addressed the same concerns identified by the Authority in the current notification has worked well in practice.
37. On the basis of the proposal submitted by SRH, the Authority is satisfied that the transaction will not lead to a substantial lessening of competition.



## **Determination**

Having taken into account a proposal submitted in accordance with S.20(3) of the Act by Scottish Radio Holdings plc., which proposal is a proposal for the purposes of S.20(4) of the Act and forms the basis of its determination in accordance with S.21(2)(a) of the Act, the Competition Authority has determined that in its opinion the result of the proposed transaction will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the proposed transaction may be put into effect.

The proposal forming the basis of the Authority's determination in accordance with S.21(2)(a) of the Act provides that:

***Scottish Radio Holdings plc and Donegal Highland Radio Limited (trading as Highland Radio) shall cease any and all forms of participation in the advertising sales of Independent Radio Sales Limited (IRS) on or before six months after the date of completion of the proposed acquisition. The parties commit to relinquish any shareholding in IRS, to cease any involvement in the management of IRS and to remove themselves from the board of IRS within the same timeframe.***

***For the avoidance of doubt, this commitment shall not have the effect of preventing IRS from purchasing airtime from Highland Radio for resale to advertisers on an arm's length basis subject to Highland Radio not participating in any way in the profits accruing to IRS or in the resale of this airtime by IRS.***

**For the Competition Authority**

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**John Fingleton**

Member of the Competition Authority

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**Declan Purcell**

Member of the Competition Authority

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**Paul Gorecki**

Member of the Competition Authority