



DETERMINATION OF MERGER NOTIFICATION M/06/089 – DOUGHTY HANSON/ SETANTA

Section 21 of the Competition Act 2002

Proposed acquisition by Doughty Hanson and Company Limited through its wholly-owned subsidiary, Tullamore S.a.r.l., of joint control in Setanta Sport Holdings Limited with Benchmark II Europe L.P.

DATED 05/01/07

Introduction

1. On 8 December 2006, 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 Doughty Hanson and Company Limited (“Doughty Hanson”) would acquire through its wholly-owned subsidiary, Tullamore S.a.r.l., joint control in Setanta Sport Holdings Limited (“Setanta”) with Benchmark II Europe L.P. (“Benchmark”).
2. The Authority forwarded a copy of the notification to the Minister and notified the undertakings involved that it considers the acquisition to be a media merger, in accordance with Section 23(1) of the Act.

The Undertakings Involved

3. Doughty Hanson, the acquirer, is a private equity fund manager organising and administering, either directly or through its subsidiaries, several private equity investment funds on behalf of its clients. At the time of notification, Doughty Hanson managed six funds, two of which are real estate funds, one of which is a technology fund and the remaining three funds are general private equity funds which have controlling interests in a number of companies and in a range of industries.
4. Doughty Hanson also owns 100% of the issued share capital of TV3 Television Network Limited (“TV3”). TV3 is licensed by the Broadcasting Commission of Ireland to provide a free-to-air national commercial television network in the State.
5. For the financial year 2005, Doughty Hanson’s consolidated worldwide turnover was approximately [...] of which [...] derived from its activities in the State.
6. Setanta, the target, is the holding company for the Setanta Group. The Setanta Group is primarily concerned with the broadcasting of televised sporting events. It operates several sports channels in Ireland, the United Kingdom, Europe, Australia and the United States.
7. In the United Kingdom and in the State, Setanta operates the following channels:

- Setanta Sports 1 and 2;
 - Setanta Sports Ireland;
 - North Americas Sports Network (NASN);
 - Celtic TV and Rangers TV; and
 - Racing UK and Racing World.
8. A ninth Setanta channel, Setanta Golf, is due to launch in 2007. Setanta Golf will feature exclusive coverage of the US PGA Tour.
 9. Setanta Sports Ireland is available on NTL Ireland as part of NTL's basic cable package while the rest of the Setanta channels are available on a subscription basis from NTL. Setanta channels are all available on Sky Digital on a monthly subscription basis. Chorus customers can subscribe only to Setanta Sports Ireland for an additional monthly subscription. The other Setanta channels as listed in paragraph 7 above are not available on Chorus.
 10. For the 13-month period ending 31 December 2005, Setanta's turnover worldwide was [...] of which [...] derived from its activities in the State.
 11. The existing shareholders of Setanta are Benchmark, Michael O'Rourke, GSEF Broadcasting Investment Limited, Leonard Ryan, Indigo Holdings Limited, Richard Brooke and Mark O'Meara.
 12. Benchmark is a Delaware limited partnership and venture capital fund and is also the largest single shareholder in Setanta with a shareholding of [...]% of the issued share capital. Pre-merger, Benchmark has joint control of the target with the individual shareholders of the target, as set out in Table 1. Post-merger, it is proposed that both Benchmark and the acquirer alone will jointly control Setanta with a combined shareholding of approximately [...] %¹.
 13. The structure of shareholdings in Setanta both pre- and post-merger are set out in Table 1.

Table 1: Pre and Post-transaction Shareholdings in Setanta

| Shareholders | Pre-transaction Shares (%) ² | Post-transaction Shares (%) ³ |
|---------------------------------------|---|--|
| Michael O' Rourke | [...] | [...] |
| Leonard Ryan | [...] | [...] |
| Indigo Holdings Limited | [...] | [...] |
| GSEF Broadcasting Investments Limited | [...] | [...] |
| Benchmark II Europe L.P. | [...] | [...] |
| Richard Brooke | [...] | [...] |
| Mark O' Meara | [...] | [...] |
| Doughty Hanson | - | [...] ⁴ |

¹ This final combined shareholding figure may change post-merger depending on the exercise of other instruments by third parties. The sharing of joint control between the acquirer and Benchmark will not change in anyway whether or not the other instruments are exercised or as a result of the manner in which they are exercised.

² Pre-transaction share figures are based on 'undiluted' shares.

³ Post-transaction shares figure estimates are based on 'fully diluted' shares.

⁴ Doughty Hanson, may exercise an option resulting in additional shares being held ultimately by Doughty Hanson post-merger which would result in Doughty Hanson having a maximum shareholding

| | | |
|--|-----|-------|
| Adamas Street V, LP. And Adams Street Direct Fund 2006 L.P. ⁵ , | - | [...] |
| DavyCREST Nominees Limited ⁶ | - | [...] |
| Goldman Sachs ⁷ | | [...] |
| Total | 100 | 100 |
| Source: Submission of the undertakings involved. | | |

Analysis

14. The undertakings involved have submitted that the activities of the acquirer and the target may be considered to overlap in the State in respect of: (1) the provision of television broadcasting services in Ireland; (2) the sale of television advertising in Ireland; and, (3) the acquisition of premium content sports rights.

Provision of television broadcasting services

15. Both the target and the acquirer are active in the provision of television broadcasting services in the State.

16. The acquirer, through TV3, operates a national, free-to-air, commercial television service.

17. While having the opportunity to broadcast its programming unencrypted for two to three hours a day on a free-to-air basis, the target is primarily active in the operation of a package of pay-TV channels which are available both through digital satellite and cable network providers in the State.

18. Taking a broad view of the activities of the undertakings involved from the viewer's perspective, both the acquirer and the target are active in the provision of television broadcasting services broadcast in the State. The acquirer and the target have submitted that their respective shares of the broader market (comprised of all television broadcasting services broadcast in the State) are [...] and [...] respectively based on audience share figures⁸.

19. However, from a content point of view, the target and the acquirer offer different types of programming: the acquirer offers a broad range of programming which includes sport, news, entertainment and children's programming, whereas the target offers sports programming only. Analysing the proposed transaction using a narrower approach of the

of [...]%. This small increase in shareholding would not alter the position of joint control intended to be held by Doughty Hanson and Benchmark post-merger.

⁵ This investment entity will obtain an equity share in, but no (joint)/controlling interest of, Setanta Sports Holdings post-merger through the exercise of several instruments agreed between the requisite entities.

⁶ This investment entity will obtain an equity share in, but no (joint)/controlling interest of, Setanta Sports Holdings post-merger through the exercise of several instruments agreed between the requisite entities.

⁷ This investment entity will obtain an equity share in, but no (joint)/controlling interest of, Setanta Sports Holdings post-merger through the exercise of several instruments agreed between the requisite entities.

⁸ Based on Nielsen data: "all Channels Report" August-October 2006 based on peak-time viewing (18:00-23.29) (Monday-Sunday).

markets concerned focused on content would demonstrate a lack of significant overlap in the activities of the undertakings involved.

20. Furthermore, the television broadcasting services of the target and the acquirer may also be differentiated on the basis of their delivery mechanism⁹: the acquirer's programming is delivered free-to-air for viewers whereas viewers wishing to view the programming of the target may either purchase the channels as part of a basic or additional package from a digital or satellite provider. For a limited number of hours a day, the target also provides its programming on a free-to-air basis. In this respect, it may be contended that there is minimal overlap in the activities of the undertakings involved.
21. Despite the fact that horizontal overlap exists when analysing the activities of the undertakings involved, the impact of the proposed transaction in terms of share of audience would be minimal, resulting in accretion for the post-merged entity in respect of the provision of television broadcasting services of [...] %.
22. The post-merger entity would also continue to face competition from free-to-air channels with appreciable audience share such as RTE¹⁰, BBC¹¹ Sky¹² and UTV¹³.
23. The Authority's investigation of the proposed transaction in this regard has shown that no competition concerns arise.

Sale of television advertising

24. The Authority also examined the proposed transaction from the perspective of advertisers. Both the target and the acquirer are active in the sale of television advertising in the State.
25. The acquirer, through its in-house sales division, Three Sales, sells advertising airtime and sponsorship opportunities on TV3 and on behalf of third-party channels such as Living TV. The target also sells advertising on its channels directly to advertising agencies.¹⁴
26. The undertakings involved have submitted that based on an estimated value of the television advertising market in the State of [...] for the year 2006, the acquirer's share is approximately [...] while the target's share is less than [...] %.
27. The undertakings involved compete with channels including RTE channels (RTE1, RTE 2), TG4 and Sky TV for advertising. RTE is considered by the undertakings involved to be the price-setter for advertising rates in

⁹ Previous decisions of the Competition Authority and of the European Commission have noted this distinction in defining narrow broadcasting product markets: Determination in Merger Notification M/05/024 UGC (Chorus)/NTL (4 November 2006); *CVC/SLEC* Case COMP/M.4066 (20 March 2006); and COMP/M.2876 (2 April 2006).

¹⁰ Approximately [...] of audience share - Based on Nielsen data: "all Channels Report" August-October 2006 based on peak-time viewing (18:00-23.29) (Monday-Sunday).

¹¹ [...] (BBC1: [...] % and BBC2 [...]) of audience share - based on Nielsen data and criteria set out in *fn. 10* above.

¹² [...] of audience share - based on Nielsen data and criteria set out in *fn. 10* above.

¹³ [...] of audience share - based on Nielsen data and criteria set out in *fn. 10* above.

¹⁴ [...]

television¹⁵ and their largest competitor in respect of sales of television advertising in the State. Its estimated share of the television advertising market in the State is considered to be at least [...] %.

28. The undertakings involved also compete with Sky and Viacom in respect of sponsorship of their programming in the State.
29. Both the acquirer and the target have submitted, and the Authority accepts, that the television advertising sector in the State is, however, competitive. New entry over the last two years by City Channel, Channel 6, the target and opt-out UK channels, have provided a greater selection of advertising opportunities for Irish advertisers.
30. The undertakings involved submit, and the Authority's investigation has demonstrated, that due to the competitive nature of the television advertising in the State, successful entry in the last two years and a considerable level of buyer power on the advertising side¹⁶, no competition concerns arise as a result of the proposed transaction in respect of television advertising in the State.

Acquisition of premium content sports rights

31. Both the acquirer and the target compete against each other in respect of the acquisition of premium content sport rights ("Irish rights")¹⁷ for their respective channels.
32. In respect of Irish rights, the undertakings involved have submitted that operators such as the target and the acquirer and RTE, Sky, BBC Northern Ireland and UTV have all bid for the Irish rights to premium content sporting events.
33. The undertakings involved have also submitted that the markets for the acquisition of sports broadcasting rights and, in particular, Irish rights are highly competitive.
34. The award of such rights is usually made on an exclusive basis to individual channels using periodic competitive tendering procedures. That this is the case is reflected in the award of the Irish rights for events such as such as UEFA Champions League, European Cup and World Cup and Rugby World Cup to different channels/bidders on a periodic basis.
35. For example, the acquirer held the exclusive right to broadcast UEFA Champions League matches on both Tuesday and Wednesday nights for the seasons 2000/01 to 2002/03. In 2002, however, RTE acquired the rights to broadcast UEFA Champions League matches on Wednesday

¹⁵ RTE and only RTE publishes 'CPT rates' each month. CPT rates concern the cost of reaching a thousand viewers with RTE's broadcasting. No other CPT rates are published by any other broadcaster and other broadcasters in the State use the RTE CPT rate as a benchmark for the pricing of their own advertising.

¹⁶ Independent evidence of buyer power in this regards is provided in the form of a Report prepared for the Minister for Communications on the Irish advertising market. See further: Europe Economics, London with support from Curtin Dorgan Associates, Dublin and from PricewaterhouseCoopers, Dublin "The effect of RTE's licence fee income on broadcasters and on the advertising market in Ireland" - A report for the Minister for Communications, Marine and Natural Resources 1 December 2004. The Report is available from the Department's website at <http://www.dcmnr.gov.ie/NR/rdonlyres/B82CE699-E558-47B6-9446-7F1EDAC09CBF/0/FinalreportDecember12004.pdf>.

¹⁷ Irish rights can be understood as the intellectual property rights awarded to an entity to broadcast a particular event in the Republic of Ireland only with the duration of such rights and their frequency determined by the rights owner.

nights in 2003/04 leaving the acquirer with the right to broadcast matches on the Tuesday night only. In 2005, however, RTE acquired all of the terrestrial free-to-air rights for the broadcast of UEFA Champions League matches in Ireland while the acquirer was unsuccessful in its bid.

36. Post-merger, the Authority has found that the proposed transaction does not give rise to competition concerns with respect to the acquisition of premium content sports rights for Ireland given the presence of several alternative credible bidders such as RTE, Sky, BBC Northern Ireland and UTV in the market for Irish sports rights.

Determination

The Competition Authority, in accordance with Section 21(2)(a) of the Competition Act, 2002, has determined that, in its opinion, the result of the proposed acquisition by Doughty Hanson and Company Limited through its wholly-owned subsidiary, Tullamore S.a.r.l. of joint control in Setanta Sport Holdings Limited with Benchmark II Europe L.P. will not be to substantially lessen competition in markets for goods and services in the State and, accordingly, that the acquisition may be put into effect subject to the provisions of Section 23(9) of the Competition Act 2002.

For the Competition Authority

Dr. Paul K. Gorecki
Member of the Competition Authority