



DETERMINATION OF MERGER NOTIFICATION M/20/021 – REACH / ISL

Section 21 of the Competition Act 2002

Proposed acquisition by Reach Publishing Group Limited of sole control of Independent Star Limited

Dated 28 August 2020

Introduction

1. On 24 July 2020, 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 Reach Publishing Group Limited (“Reach Publishing”), a wholly-owned subsidiary of Reach Plc (“Reach”), would acquire sole control of Independent Star Limited (“ISL”) (the “Proposed Transaction”).
2. Given that both Reach and ISL carry on a “media business” within the State¹ the Proposed Transaction constitutes a “media merger” for the purposes of Part 3A of the Act.

The Proposed Transaction

3. The share capital of ISL is currently held by: (i) Reach Publishing, which holds 50% of the issued voting share capital; and (ii) Independent Communications (Ireland) Limited (“ICI”), which holds the remaining 50% of the issued voting share capital as well as 100% of the issued non-voting share capital of ISL. ICI is a subsidiary of Independent News & Media Group Limited (“INM”). Reach and INM (through ICI) currently exercise joint control over ISL.
4. The Proposed Transaction is to be implemented pursuant to a share purchase agreement (“SPA”) between Reach Publishing, ICI, and INM dated 23 July 2020. Pursuant to the SPA, Reach Publishing will acquire the 50% of the issued voting share capital of ISL currently held by ICI, and 100% of the issued non-voting share capital of ISL currently held by ICI. Following completion of the Proposed Transaction, Reach will own the entire issued share capital and thus sole control of ISL.

¹ As defined in section 28A(1) of the Act.



5. It should be noted that Reach's acquisition of joint control of ISL was approved by the Commission on 12 September 2018,² subject to binding commitments which were intended to prevent any direct or indirect exchange of competitively sensitive information between: (i) Reach and INM; (ii) Reach and ISL; and (iii) ISL and INM. These commitments will terminate upon completion of the Proposed Transaction.³

Notification under the Simplified Merger Notification Procedure

6. The Proposed Transaction was notified under the Commission's Simplified Merger Notification Procedure ("SMNP").⁴ In accordance with paragraph 3.5 of the SMNP Guidelines, the Commission assessed whether or not it was appropriate to apply the SMNP in this instance. On 12 August 2020, following its assessment and having received a third party submission which raised a competition concern, the Commission decided that, while the Proposed Transaction may qualify in principle for assessment under the SMNP, it was appropriate to review the Proposed Transaction under the standard merger notification procedure in this instance.
7. The Commission is of the view that the Proposed Transaction should not be reviewed under the SMNP for the following reason:
- i) the Commission considers that paragraph 2.14 of the SMNP guidelines is applicable as a third party submission received by the Commission raised a competition concern in relation to the Proposed Transaction.⁵

The Undertakings Involved

The Acquirer – Reach

8. Reach is a public limited company headquartered in the United Kingdom. Reach publishes national, regional and local newspapers in the United Kingdom. In the State, Reach publishes the *Irish Mirror*, the *Irish Sunday Mirror*, the *Sunday People*, the *Daily Record*, the *Sunday Mail* (the Sunday edition of the *Daily Record*), the *Daily Express*, *Sunday Express*, *Daily Star Sunday*, and the magazines *RSVP*, *OK!*, *New!* and *Celtic View*. It also operates the following websites in the State: *irishmirror.ie*, *dublinlive.ie*, *corkbeo.ie* and *www.rsvplive.ie*. Reach does not publish any regional or local newspapers in the State.
9. For the financial year ending 29 December 2019, the worldwide turnover of Reach was approximately €[...], of which approximately €[...] was generated in the State.

The Vendor – ICI

² This determination is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M-18-016-Trinity-Mirror-Northern-Shell-Phase-2-DET-public.pdf>.

³ On 25 August 2020, Reach informed the Commission that, following completion of the Proposed Transaction, ISL will [...].

⁴ The SMNP Guidelines are available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2020/05/Simplified-Merger-Notification-Procedure-Guidelines.pdf>.

⁵ This third party submission is described in paragraphs 14-15 below.



10. ICI is a subsidiary of INM. ICI currently owns 50% of the issued voting share capital as well as 100% of the issued non-voting share capital of ISL.

The Target – ISL

11. ISL is a private limited company incorporated in the State. ISL publishes the *Irish Daily Star* and operates the websites *thestar.ie* and *buzz.ie* in the State.
12. For the financial year ending 28 December 2018, the worldwide turnover of ISL was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

13. Reach states in the notification that:

“Through the acquisition of the remaining interest in ISL, Reach intends to create synergies in its businesses in the State. These synergies include creating a more resilient revenue mix and delivering cost synergies.”

Third Party Submissions

14. One third party submission was received by the Commission. The submission raised concerns relating to: (i) employment at the newspaper titles owned by Reach and ISL; (ii) editorial content of the newspaper titles owned by Reach and ISL; (iii) competition in the “red top” or “tabloid” newspaper sector in the State; and (iv) competition in relation to “shared advertising” in the newspaper titles owned by Reach and ISL.
15. The concerns raised in the submission in relation to employment and the editorial content of the newspapers owned by Reach and ISL are not competition related, and therefore do not come within the remit for consideration by the Commission. The competition concerns raised in the submission have been assessed by the Commission as part of its review of the likely competitive impact of the Proposed Transaction.

Competitive Assessment

Horizontal overlap

16. There is a horizontal overlap between the parties’ activities in the State with respect to:
- i) the publication and sale of daily (Monday to Saturday) national newspapers in the State;
 - ii) the sale of display advertising in daily (Monday to Saturday) national newspapers in the State; and
 - iii) the sale of online advertising in the State.

Market Definition



17. The Commission has previously identified several markets within the broader newspaper industry. In its previous determinations,⁶ the Commission considered 'quality' daily national newspapers in the same circulation and advertising markets as 'tabloid' or 'red top' daily national newspapers. In light of the third party submission received by the Commission, the Commission will now consider if it is appropriate to depart from its prior decisional practice, and if 'red top' or 'tabloid' daily national newspapers constitute a separate market from 'quality' daily national newspapers.

Views of the Parties

18. In a submission to the Commission, the parties state that:

“red tops do not constitute a separate product market for either circulation or advertising. We refer to the Competition Authority’s determination in Metro/Herald AM (M/09/013) where the Authority concluded that the relevant markets for readership encompassed all daily (morning and evening) paid for and free newspapers and that the relevant advertising market was display newspaper advertising. The Authority referred to the content of paid for and free newspapers being similar consisting of a mix of national and international news, sport, entertainment, travel, food and health features. We refer to the determination of the CCPC in Irish Times/Sappho (M/17/068) in which the CCPC refers at paragraph 3.4 to the Metro/Herald AM determination and the Authority having included that ‘quality’ daily national newspapers were in the same market as ‘tabloid’ daily newspapers.

Therefore, the clear weight of CCPC precedent including the recent Phase 2 determination in Trinity Mirror/Northern & Shell unequivocally supports the conclusion that so called ‘red tops’ or ‘tabloids’ do not form a distinct relevant market in terms of either circulation or advertising in the State”

Views of the Commission

19. In its determination in *M/18/067 – Trinity Mirror/Northern & Shell*, the Commission stated the following:

“In its merger determination in M/09/013 – Metro/Herald AM (the “2009 Decision”), the Commission’s predecessor, the Competition Authority (the “Authority”), reached the following conclusions in relation to the relevant product market:

⁶ See, for example:

M/09/013 – Metro/Herald AM, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/M-09-013-Phase-2-Determination.public.pdf>;

M17/068 – Irish Times/Sappho, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/12/M-17-068-Irish-Times-Sappho-Phase-2-DET-Public-Version-1.pdf>; and

M/18/016 – Trinity Mirror/Northern & Shell, which is available at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M-18-016-Trinity-Mirror-Northern-Shell-Phase-2-DET-public.pdf>; and



- *There are separate markets for readers and advertisers given the two-sided nature of the newspaper industry (see paragraphs 3.5 and 3.6 of the 2009 Decision);*
- *Local newspapers do not compete in the same advertising market as daily newspapers (see paragraphs 3.29-3.33 of the 2009 Decision);*
- *Sunday newspapers do not compete in the same advertising market as daily (Monday to Saturday) newspapers (see paragraphs 3.35-3.40 of the 2009 Decision); and*
- *Newspaper advertising is a separate product market from other media advertising platforms (see paragraphs 3.47-3.72 of the 2009 Decision).*

The 2009 Decision included ‘quality’ daily national newspapers in the same advertising market as ‘tabloid’ daily national newspapers. In its merger determination in M/17/068 – Irish Times/Sappho (the Examiner), the Commission followed the 2009 Decision and examined the likely competitive impact of that transaction in the following markets: the publication and sale of daily (Monday to Saturday) national newspapers in the State; the sale of advertising in daily (Monday to Saturday) national newspapers in the State; and the sale of online advertising in the State.

During the investigation, the Commission found evidence to indicate that news content can be found in a wide range of online outlets (e.g., the websites of large media broadcasters such as RTÉ, BBC, The Guardian, etc.) and social media websites such as Facebook, Twitter, Instagram, and Snapchat. Newspaper circulation and advertising have declined significantly in the State in the past decade, primarily as a result of the increasing consumption of news content online.”

20. In light of the above and in the absence of any evidence to the contrary, the Commission considers that there is no reason to depart from its previous view on the relevant product market for the purposes of assessing the Proposed Transaction.
21. With respect to the relevant geographic market, given that daily national newspapers are circulated throughout the State, and there is no regional or localised specification with respect to either content or advertising, the Commission, therefore, considers that the relevant geographic market is the State.

Competitive Analysis

The publication and sale of daily (Monday to Saturday) national newspapers in the State

22. There is a horizontal overlap between the parties’ activities in the State with respect to the publication and sale of daily (Monday to Saturday) national newspapers in the State.
23. In the State, Reach publishes the *Irish Mirror*, the *Daily Record*, and the *Daily Express*. ISL publishes the *Irish Daily Star* in the State.



24. Table 1 below lists estimated shares in the market for the publication and sale of daily (Monday to Saturday) national newspapers in the State.

Table 1: Daily (Monday to Saturday) national newspaper circulation in the State, July – December 2019

Newspaper Publisher	Title	Share
INM	<i>Irish Independent</i>	[25-30]%
	<i>The Herald</i>	[5-10]%
	<i>Irish Daily Star (50%)</i>	[5-10]%
Irish Times DAC	<i>Irish Times</i>	[15-20]%
	<i>Irish Examiner</i>	[5-10]%
News Corp UK & Ireland Limited	<i>Irish Sun</i>	[10-15]%
	<i>Times Ireland</i>	[0-5]%
Daily Mail and General Trust Plc	<i>Daily Mail</i>	[5-10]%
David and Fredrick Barclay	<i>The Telegraph</i>	[0-5]%
Nikkei Inc.	<i>The Financial Times</i>	[0-5]%
Guardian Media Group plc	<i>The Guardian</i>	[0-5]%
Reach	<i>Irish Mirror</i>	[5-10]%
	<i>Irish Daily Star (50%)</i>	[5-10]%
	<i>Daily Express</i>	[0-5]%
	<i>Daily Record</i>	[0-5]%

Source: The notifying parties, based on ABC circulation data.

25. The Commission considers that the Proposed Transaction raises no horizontal competition concerns in the publication and sale of daily (Monday to Saturday) national newspapers in the State for the reasons set out below.
26. First, following completion of the Proposed Transaction, Reach's share of this relevant market will increase by only [5-10]% (from [10-15]% to [15-20]%). There will remain a significant number of competitors of Reach active in this market such as INM ([30-35]%, post-Proposed Transaction), the Irish Times DAC ([20-25]%) and News Corp UK & Ireland Limited ([15-20]%).
27. Second, it does not appear that the newspaper publications owned by Reach (the *Irish Daily Mirror*, the *Daily Express*, and the *Daily Record*) and ISL (the *Irish Daily Star*) are close competitors. In a submission to the Commission, Reach stated the following:

"There are a number of significant differences between ISL's Irish Daily Star on the one hand and the Reach group's newspapers (the Irish Daily Mirror, the Daily Record and the Daily Express) on the other which underline that they are not each other's closest competitors within the circulation and advertising daily newspaper markets in the State.



- a) *The Irish Daily Star is completely Irish whereas the Irish Daily Mirror takes a proportion of its content from the UK Daily Mirror and is editionised for Ireland.*
- b) *The Daily Record and Daily Express are not editionised at all for Ireland.*
- c) *The content of the Irish Daily Mirror is in line with the UK Daily Mirror with regard to campaigning journalism, coverage of politics and social affairs whilst the Irish Daily Star is more focused on crime and showbiz.*
- d) *The Daily Express is considered to be right wing leaning whereas the Daily Star/Irish Daily Star, Daily Mirror/Irish Daily Mirror and Daily Record have a more left wing orientation.”*

28. In addition to the above, ISL informed the Commission that:

“[...]”

29. Based on the evidence provided by the notifying parties, the Commission considers that the newspaper publications owned by Reach (the *Irish Daily Mirror*, the *Daily Express*, and the *Daily Record*) and ISL (the *Irish Daily Star*) are not close competitors in the market for the publication and sale of daily (Monday to Saturday) national newspapers in the State.
30. Third, the Proposed Transaction is likely to reduce the level of concentration (as measured by the Herfindahl-Hirschman Index (the “HHI”)) in the market for the publication and sale of daily (Monday to Saturday) national newspapers in the State due to a decrease in the share of this market attributable to INM, which currently jointly controls ISL with Reach.⁷

The sale of display advertising in daily (Monday to Saturday) national newspapers in the State

31. There is a horizontal overlap between the parties’ activities in the State with respect to the sale of display advertising in daily (Monday to Saturday) national newspapers in the State.
32. In the State, Reach sells advertising in the *Irish Mirror*. Reach confirmed to the Commission that neither the *Daily Record* nor the *Daily Express* target advertising customers in the State. ISL sells advertising in the *Irish Daily Star* in the State.
33. Table 2 below lists estimated shares in the market for the sale of display advertising in daily (Monday to Saturday) national newspapers in the State.

⁷ The HHI of the market for the publication and sale of daily (Monday to Saturday) national newspapers in the State (based on the market share figures in Table 1 above) is [...]. Following completion of the Proposed Transaction, the HHI will fall to [...].



Table 2: The sale of display advertising in daily (Monday to Saturday) national newspapers in the State, January 2020

Publisher	Title	Share
INM	<i>Irish Independent</i>	[30-35]%
	<i>The Herald</i>	[0-5]%
	<i>Irish Daily Star (50%)</i>	[0-5]%
Irish Times DAC	<i>Irish Times</i>	[25-30]%
	<i>Irish Examiner</i>	[10-15]%
News Corp UK & Ireland Limited	<i>Irish Sun</i>	[5-10]%
Daily Mail and General Trust plc	<i>Daily Mail</i>	[0-5]%
Reach	<i>Irish Daily Mirror</i>	[0-5]%
	<i>Irish Daily Star (50%)</i>	[0-5]%

Source: The notifying parties, based on “Reach Group Adspend Report using the YTD January 2020 figures”.

34. The Commission considers that the Proposed Transaction raises no horizontal competition concerns in the sale of display advertising in daily (Monday to Saturday) national newspapers in the State for the reasons set out below.
35. First, following completion of the Proposed Transaction, Reach’s share of this relevant market will increase by only [0-5]% (from [5-10]% to [10-15]%). There will remain a significant number of competitors of Reach active in the sale of display advertising in daily (Monday to Saturday) national newspapers in the State, such as INM ([35-40]%, post-Proposed Transaction) and the Irish Times DAC ([40-45]%).
36. Second, as outlined in paragraphs 27 and 28 above, it does not appear that the publications owned by Reach (in particular, the *Irish Daily Mirror*) and ISL’s *Irish Daily Star* are close competitors in relation to the sale of display advertising in daily (Monday to Saturday) newspapers in the State. In addition to the views expressed to the Commission in paragraph 27 above, Reach also expressed the following view to the Commission:

“It is important to note that the Reach newspapers in the State have little or no advertising business in Ireland. The Daily Record and the Daily Express do not have advertising revenues in the State. Furthermore, the Daily Record and the Daily Express do not target advertising customers in the State. The Irish Daily Mirror has a very small [0-5]% share of the display advertising market for daily newspapers in the State.”

37. Third, it is not clear that Reach and ISL target similar advertising customers in the State. ISL informed the Commission that:

“[...]”

38. Based on the evidence provided by the notifying parties, the Commission considers that the newspaper publications owned by Reach (in particular, the *Irish Daily Mirror*) and



ISL (the *Irish Daily Star*) are not close competitors in the sale of display advertising in daily (Monday to Saturday) national newspapers in the State.

39. Fourth, the Proposed Transaction is likely to reduce the level of concentration (as measured by the HHI) in the market for the sale of display advertising in daily (Monday to Saturday) national newspapers in the State due to a decrease in market share attributable to INM which currently jointly controls ISL with Reach.⁸

The sale of online advertising in the State

40. There is a horizontal overlap between the parties' activities in the State with respect to the sale of online advertising space in the State. Reach operates the websites *irishmirror.ie*, *dublinlive.ie*, *corkbeo.ie* and *www.rsvplive.ie* and ISL operates the websites *thestar.ie* and *buzz.ie* in the State.
41. The notifying parties state in the notification that the overlap in respect of this relevant market is minimal. ISL generated only €[...] from the sale of online advertising in the State, giving ISL a share of approximately [0-5]% of this relevant market. Reach generated approximately €[...] from the sale of online advertising in the State, giving Reach a share of approximately [0-5]% of this relevant market. The Proposed Transaction will therefore result in a minimal increase in Reach's market share in this relevant market.
42. For this reason, the Commission considers that the Proposed Transaction raises no competition concerns in the sale of online advertising in the State.

Vertical Relationship

43. The parties state in the notification that there is no existing vertical relationship between Reach and ISL in the State. Reach is not vertically integrated and uses independent third parties to both print and distribute its newspaper titles in the State.
44. In light of the above, Commission considers that the Proposed Transaction raises no vertical foreclosure concerns in the State.

Conclusion

45. 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

46. No ancillary restraints were notified.

⁸ The HHI of the market for the market for the sale of display advertising in daily (Monday to Saturday) national newspapers in the State (based on the market share figures in Table 2 above) is [...]. Following completion of the Proposed Transaction, the HHI will fall to [...].



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 Reach Publishing Group Limited, a wholly-owned subsidiary of Reach Plc, would acquire sole control of Independent Star 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, subject to section 28C(1) of the Competition Act 2002, as amended.

For the Competition and Consumer Protection Commission

Brian McHugh

Member

Competition and Consumer Protection Commission