



Competition Authority Clears the Metro and Herald AM Merger with Commitments

The Competition Authority has today cleared, with Commitments, the proposed acquisition whereby Irish Times Limited ("ITL"), DMG Ireland Holdings Limited ("DMG") and Independent Newspapers (Ireland) Limited ("Independent") will acquire joint control of Fortunegreen Limited ("Fortunegreen"). The Competition Authority came to its decision after completing its review of the transaction, which was notified under the Competition Act 2002 (the "Act") by the parties on 17 July 2009.

The proposed transaction concerns the restructuring of Fortunegreen. Fortunegreen is currently jointly controlled by ITL and DMG. Fortunegreen currently publishes *Metro*, a free daily newspaper, in the Greater Dublin Area ("GDA"). Under the proposed transaction, Independent will acquire an interest in Fortunegreen. Post-transaction, Fortunegreen will be jointly controlled by ITL, DMG, and Independent ("the shareholders" of Fortunegreen) and will publish a single daily free newspaper, *Metro Herald*. *Herald AM* and *Metro* will cease to be published.

On 27 August 2009, the Competition Authority announced its decision to carry out a full investigation (Phase 2) in relation to the proposed transaction. This decision came after a preliminary investigation where the Competition Authority was unable to conclude, without further investigation, that the proposed transaction did not substantially lessen competition.

The Competition Authority's investigation identified three concerns that would likely arise from the proposed transaction; these are:

1. the ability of Fortunegreen to compete effectively in the market for newspaper display advertising in the GDA;
2. the potential for coordination between the shareholders of Fortunegreen; and,
3. the potential for coordination between the shareholders of Fortunegreen and Fortunegreen.

To address these concerns the parties submitted proposals in accordance with section 20(3) of the Act. The Competition Authority is of the view that the proposals are appropriate and effectively address its competition concerns. In particular, the parties undertake that:

- the shareholders will direct Fortunegreen to operate *Metro Herald* as an independent competitor of the shareholders' newspapers.
- The management of Fortunegreen will make decisions in respect of certain key competitive parameters without requiring the approval of the shareholders or their representatives on the Board.

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- the directors nominated to the Board of Fortunegreen will not have day-to-day responsibility for the advertising function of any daily newspaper sold in the GDA and certain information will not be exchanged between the shareholders and between the shareholders and Fortunegreen in respect of their own business activities

The Competition Authority has taken the proposals into account and they form the basis of its determination. The proposals ensure that:

- Fortunegreen will have the incentive and the ability to be an effective independent competitor in the market for display newspaper advertising in the GDA;
- the proposed transaction will not create a forum that could enhance the ability for coordination between the shareholders and between the shareholders and Fortunegreen.

Therefore, the Competition Authority, in accordance with section 22(3)(a) of the Act and having taken into account the proposals submitted by ITL, DMG, Independent and Fortunegreen in accordance with section 20(3) of the Act has determined that, in its opinion, the result of the proposed transaction will not be to substantially lessen competition in any market for goods or services in the State and, accordingly, the acquisition may be put into effect, subject to the provisions of section 23 of the Act and subject to the proposals which are binding upon the parties if the proposed transaction is put into effect.

Under the Act, a determination which clears with or without conditions a media merger must be referred to the Minister for Enterprise, Trade & Employment (the "Minister") for independent review. Accordingly, the decision of the Authority has been notified to the Minister. If the Minister makes no order within 30 days, the parties are free to implement the proposed transaction.

A public version of the full text of the reasons for the determination will be published on the Competition Authority's website (www.tca.ie) by no later than 4 December 2009 after allowing the parties the opportunity to request that confidential information be removed from the published version.

NOTES TO THE EDITOR

Under Part 3 of the Competition Act 2002, certain mergers or acquisitions in the State that satisfy certain financial thresholds and other conditions must be notified to the Competition Authority and may not be put into effect during a prescribed waiting period. The Authority may clear or prohibit the proposed transaction.

The public version of the commitments by the parties is provided in the form attached.

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