



DETERMINATION OF MERGER NOTIFICATION M/10/030 -

ALPHA NEWSPAPER GROUP/NEWRY DEMOCRAT

Section 21 of the Competition Act 2002

Proposed acquisition by The Tontine Rooms Holding Company Limited of the business of the *Newry Democrat* from TCH Democrat Media Limited

Dated 03 November 2010

Introduction

1. On 6 September 2010, in accordance with section 18 of the Competition Act 2002 (the "Act"), the Competition Authority (the "Authority") received a notification of a proposed transaction whereby The Tontine Rooms Holding Company Limited ("Tontine") would acquire the assets, including goodwill, of the business of the *Newry Democrat* from TCH Democrat Media Limited ("TCHDML").
2. On 7 September 2010, the Authority forwarded a copy of the notification to the Minister for Enterprise, Trade & Innovation. On the same date, the Authority informed the undertakings involved in the proposed transaction that it considered the proposed transaction to be a "media merger" within the meaning of section 23 of the Act.

The Undertakings Involved

The Acquirer

3. Tontine, the holding company for the Alpha Newspaper Group ("Alpha"), is incorporated in Northern Ireland. Alpha is owned by John Taylor (Lord Kilclooney), [...].¹ Alpha is mainly active in the publication and sale of direct advertising² in weekly local and regional newspapers in Northern Ireland and in the State. Alpha is also active in the letting

¹ [...].

² Direct advertising sales involve customers purchasing advertising space directly from the newspaper.

of property in the State and Northern Ireland and holds a 33.33% shareholding in Northern Media Group Limited³.

4. Alpha publishes and sells direct advertising in approximately eighteen weekly local and regional newspapers in Northern Ireland, one of which is the *Ulster Gazette*. The *Ulster Gazette* is circulated mainly in Counties Down, Armagh and Tyrone in Northern Ireland, but is noted to have limited circulation in County Monaghan in the State⁴.
5. For the financial year ending 31 December 2009, there were no sales of the *Ulster Gazette* in the State. However, the *Ulster Gazette* did generate turnover from the sale of direct advertising to customers located in the State who wished to target an audience in Counties Down, Armagh and Tyrone in Northern Ireland. This accounted for approximately 2% of the total advertising turnover of the *Ulster Gazette*.
6. In the State, Alpha publishes and sells direct advertising in two weekly paid-for regional newspapers, namely:
 - *Midland Tribune* – circulated mainly in County Offaly, north County Tipperary and parts of County Laois; and,
 - *Tullamore Tribune* – circulated mainly in north and east County Offaly, Counties Westmeath, Laois and Kildare.
7. In the course of its investigation, the Authority learnt that on 31 August 2010, Alpha ceased publication of three paid-for weekly newspapers in the State: *Roscommon Champion*, *the Longford News* and *the Athlone Voice*.
8. For the year ending 31 December 2009, Alpha generated a turnover of approximately €[...]⁵ from rental income and the publication and sale of direct advertising in its weekly newspapers in the State.

The Target

9. *Newry Democrat* is a weekly paid-for newspaper that is circulated mainly in Newry, County Down and south County Armagh in Northern Ireland. *Newry Democrat* has a limited circulation in north Counties

³ Northern Media Group Limited is the largest local radio group in Northern Ireland, owning six stations, namely: Q102.9, Q97.2, Q101.2, Five FM, Six FM and Seven FM. The company was formed from a consortium which included The Irish News, River Media and Alpha.

⁴ Information obtained from www.ulstergazette.co.uk.

⁵ Using the conversion rate of £1 Sterling to €1.11116 as at 31 December 2009.

Louth and Monaghan, all being counties within the State. Circulation of the *Newry Democrat* in the State is no more than 45 copies per week⁶ and accounts for less than 1% of the newspaper's total average weekly circulation.⁷

10. *Newry Democrat* is currently owned by TCHDML. TCHDML is incorporated in Northern Ireland and is active in newspaper publishing and other media activities mainly in Northern Ireland. TCHDML's parent company, Thomas Crosbie Holdings Limited ("TCHL"), is incorporated in the State and is active in newspaper publishing and other media activities in the State. Amongst its newspapers are the *Irish Examiner* and the *Sunday Business Post*.
11. For the financial year ending 31 December 2009, *Newry Democrat* generated a turnover of approximately €7430.00⁸ in the State. Approximately 76% of this turnover figure was generated from the sale of direct advertising to customers located in the State who wished to target an audience in Counties Down and Armagh in Northern Ireland and in north Counties Louth and Monaghan in the State. The remaining 24% of the *Newry Democrat's* turnover in the State was generated from the sale of the newspaper itself.

Rationale for the Proposed Transaction

12. Alpha states that the proposed acquisition will allow it to extend its portfolio of regional newspapers in Northern Ireland and enter the Newry area where it is not currently active.

Call Option Agreement

13. On 27 September 2010, in response to an inquiry by the Authority, Tontine disclosed a copy of a Call Option Agreement ("COA") dated 3 September 2010. The COA gave TCHL, the parent company of TCHDML (the publisher of the *Newry Democrat*), the option for a period of 10 years to purchase from Alpha the right to the goodwill and intellectual property rights in *the Roscommon Champion*. The

⁶ This amounts to approximately 2348 copies per annum.

⁷ According to the average net circulation for the 25 issues distributed between 4 January 2010 and 4 July 2010 of 7,821 as published by ABC. ABC provides detailed circulation, distribution, attendance, traffic and related data across a broad range of media platforms.

⁸ Supra footnote 5.

consideration for the Call Option Agreement was nominal, as was the price for the exercise of the option. The Authority learnt subsequently that the COA was executed on the same day as the Asset Purchase Agreement regarding the sale of the *Newry Democrat*.

14. On 30 September 2010 the Authority served on each of Tontine and TCHL a separate Requirement for Further Information pursuant to section 20(2) of the Act ("RFI"). The responses to the RFIs were received by the Authority within the time periods specified.
15. Having regard to all the circumstances relating to the COA, the Authority formed the preliminary view that the COA was related to the notified transaction. Consequently, information relating to the COA should have been included in the notification of the proposed transaction. The Authority also formed the preliminary view that the COA raised competition concerns since TCHL was already the publisher of *the Roscommon Herald*, which appeared to be the main competitor in the Roscommon area of *the Roscommon Champion*.(i.e., the newspaper in respect of which TCHL had been given the CAO).⁹
16. On 27 October 2010, the Authority advised the parties separately of its preliminary view concerning the COA. Each of the parties disagreed with the Authority's preliminary view and asserted that the COA was not related to the notified transaction. The parties also submitted that the COA was only notifiable under the Act when it was exercised.
17. However, on 29 October 2010, the parties delivered to the Authority a copy of a Termination Agreement dated 29 October 2010 whereby the parties terminated the COA.

Third Party Submissions

18. No submissions were received.

Analysis

19. In its previous decisions the Authority has adopted a two-sided approach in assessing mergers involving the publication and sale of

⁹ Internal documents provided by Tontine indicate that *the Roscommon Herald* is the primary competitor of *the Roscommon Champion*.

print media¹⁰. The Authority draws a distinction between the two inter-related markets for readers and advertisers. Such an approach is consistent with decisions of the European Commission (the "Commission").¹¹

20. The Authority does not consider it necessary to define the relevant product and geographic market(s) with regard to the proposed transaction for the reasons set out below.

Newspaper circulation and Readership

21. There is little or no horizontal overlap in the State with respect to readership of the *Newry Democrat* and the *Ulster Gazette* as the *Ulster Gazette* makes little or no sales in the State¹².

Sale of Direct Advertising in Newspapers

22. There is minimal horizontal overlap in the sale of direct advertising in newspapers in the State. This overlap is limited to the sale of direct advertising to customers based in the State who wish to target audiences in Counties Down, Armagh and Tyrone in Northern Ireland.

Conclusion

23. In light of the above, and given the termination of the COA, the Authority considers that the proposed merger does not raise any competition concerns in the State due to the minimal overlap of the activities of the parties in the State.

Ancillary Restraint

24. The proposed transaction imposes non-compete and non-solicitation obligations on TCHDL, the Vendor, for the period of six months from the completion date of the proposed transaction. The Authority

¹⁰ *M/10/017 Metropolis/Medical Publications*, decision dated 16 June 2010, *M/08/038 Alpha Publications/The Herald*, decision dated 22 January 2009 and *M/09/013 Metro/Herald Am*, decision dated 27 August 2009.

¹¹ Case No. IV/M.1401 *Recoletos/Unedisa* and Case No. COMP/M.5051 *APW/GMG/Emap*.

¹² There were no sales of the *Ulster Gazette* in the State for the year ending 2009.

considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.

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 whereby The Tontine Rooms Holding Company Limited would acquire the assets, including goodwill, of the business of the *Newry Democrat* from TCH Democrat Media Limited will not be to substantially lessen competition in markets for goods or services in the State, and accordingly, that the acquisition may be put into effect, subject to section 23(9)(a) of the Act.

For the Competition Authority

Dr. Stanley Wong

Member of the Competition Authority